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**Title 3—****Executive Order 14091 of February 16, 2023****The President****Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government**

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1. *Policy.*** On my first day in office, I signed Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government), which charged the Federal Government with advancing equity for all, including communities that have long been underserved, and addressing systemic racism in our Nation's policies and programs. By advancing equity, the Federal Government can support and empower all Americans, including the many communities in America that have been underserved, discriminated against, and adversely affected by persistent poverty and inequality. We can also deliver resources and benefits equitably to the people of the United States and rebuild trust in Government.

Over the past 2 years, through landmark legislation—including the American Rescue Plan Act of 2021 (Public Law 117–2); the bipartisan Infrastructure Investment and Jobs Act (Public Law 117–58) (Bipartisan Infrastructure Law); division A of Public Law 117–167, known as the Creating Helpful Incentives to Produce Semiconductors (CHIPS) Act of 2022; Public Law 117–169, commonly referred to as the Inflation Reduction Act of 2022; and the Bipartisan Safer Communities Act (Public Law 117–159)—as well as executive action, my Administration has vigorously championed racial equity and has advanced equal opportunity for underserved communities. Executive departments and agencies (agencies) have engaged in historic work assessing how their policies and programs perpetuate barriers for underserved communities and developing strategies for removing those barriers. They have made important progress incorporating an evidence-based approach to equitable policy-making and implementation, and they have crafted new action plans to advance equity. In short, my Administration has embedded a focus on equity into the fabric of Federal policymaking and service delivery. Our work to transform the way the Federal Government serves the American people has been complemented by Executive Order 14035 of June 25, 2021 (Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce), which continues to help ensure that my Administration—the most diverse in our Nation's history—reflects the growing diversity of the communities we serve.

My Administration's commitment to equity has produced better decision-making and more equitable outcomes. We have delivered the most equitable economic recovery in memory, and, driven by the expanded Child Tax Credit, we cut child poverty to its lowest rate on record in 2021, including record low Black, Latino, Native American, and rural child poverty. Under my Administration, the economy has created nearly 11 million jobs, and we have brought down unemployment nationwide—in particular for Black and Latino workers, for whom unemployment rates are near 50-year lows. My Administration has provided emergency rental assistance to help millions of families stay in their homes, and we have prohibited Federal contractors from paying people with disabilities subminimum wages. We are rebuilding roads and bridges, replacing the Nation's lead pipes to provide clean drinking water for all, delivering access to affordable high-speed internet to Americans

in both rural and urban communities, investing in public transit, and reconnecting communities previously cut off from economic opportunity by highways, rail lines, or disinvestment. My Administration has provided funding to improve accessibility for passengers with disabilities on rail systems and in airports, expanded health coverage for millions of Americans, and expanded home- and community-based services so more people with disabilities and older adults can live independently. We have secured billions of dollars in direct new investments for Tribal Nations and Native American communities and have directed an increase in the share of Federal Government contract spending awarded to small disadvantaged businesses. My Administration has taken action to strengthen public safety, advance criminal justice reform, correct our country's failed approach to marijuana, protect civil rights, and stand up against rising extremism and hate-fueled violence that threaten the fabric of our democracy. We have taken historic steps to advance full equality for lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) Americans, including by ending the ban on transgender service members in our military; prohibiting discrimination based on sexual orientation, gender identity, and sex characteristics across Federal programs; and signing into law the Respect for Marriage Act (Public Law 117–228) to preserve protections for the rights of same-sex and interracial couples. My Administration is also implementing the first-ever National Strategy on Gender Equity and Equality to ensure that all people, regardless of gender, have the opportunity to realize their full potential.

These transformative achievements have advanced the work of building a more equitable Nation. Yet, members of underserved communities—many of whom have endured generations of discrimination and disinvestment—still confront significant barriers to realizing the full promise of our great Nation, and the Federal Government has a responsibility to remove these barriers. It is imperative to reject the narrow, cramped view of American opportunity as a zero-sum game. When any person or community is denied freedom, dignity, and prosperity, our entire Nation is held back. But when we lift each other up, we are all lifted up. Therefore, my Administration must take additional action across the Federal Government—in collaboration with civil society, the private sector, and State and local government—to continue the work begun with Executive Order 13985 to combat discrimination and advance equal opportunity, including by redressing unfair disparities and removing barriers to Government programs and services. Achieving racial equity and support for underserved communities is not a one-time project. It must be a multi-generational commitment, and it must remain the responsibility of agencies across the Federal Government. It therefore continues to be the policy of my Administration to advance an ambitious, whole-of-government approach to racial equity and support for underserved communities and to continuously embed equity into all aspects of Federal decision-making.

This order builds upon my previous equity-related Executive Orders by extending and strengthening equity-advancing requirements for agencies, and it positions agencies to deliver better outcomes for the American people. In doing so, the Federal Government shall continue to pursue ambitious goals to build a strong, fair, and inclusive workforce and economy; invest in communities where Federal policies have historically impeded equal opportunity—both rural and urban—in ways that mitigate economic displacement, expand access to capital, preserve housing and neighborhood affordability, root out discrimination in the housing market, and build community wealth; advance equity in health, including mental and behavioral health and well-being; deliver an equitable response to the COVID–19 pandemic; deliver environmental justice and implement the Justice40 Initiative; build prosperity in rural communities; ensure equitable procurement practices, including through small disadvantaged businesses contracting and the Buy Indian Act (25 U.S.C. 47); pursue educational equity so that our Nation's schools put every student on a path to success; improve our Nation's criminal justice system to end unjust disparities, strengthen public safety, and ensure

equal justice under law; promote equity in science and root out bias in the design and use of new technologies, such as artificial intelligence; protect the right to vote and realize the promise of our Nation's civil rights laws; and promote equity and human rights around the world through our foreign policy and foreign assistance. By redoubling our efforts, the Federal Government can help bridge the gap between the world we see and the future we seek.

**Sec. 2. *Establishing Equity-Focused Leadership Across the Federal Government.*** (a) *Establishment of Agency Equity Teams.* The Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health and Human Services, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Energy, the Secretary of Education, the Secretary of Veterans Affairs, the Secretary of Homeland Security, the Administrator of the Small Business Administration, the Commissioner of Social Security, the Administrator of General Services, the Administrator of the United States Agency for International Development, the Administrator of the Environmental Protection Agency, the Administrator of the National Aeronautics and Space Administration, the Director of the National Science Foundation, and the Director of the Office of Personnel Management (agency heads) shall, within 30 days of the date of this order, ensure that they have in place an Agency Equity Team within their respective agencies to coordinate the implementation of equity initiatives and ensure that their respective agencies are delivering equitable outcomes for the American people.

(i) Each Agency Equity Team shall be led by a designated senior official (senior designee) charged with implementing my Administration's equity initiatives, and shall include senior officials from the office of the agency head and the agency's program, policy, civil rights, regulatory, science, technology, service delivery, financial assistance and grants, data, budget, procurement, public engagement, legal, and evaluation offices, as well as the agency's Chief Diversity Officer, to the extent applicable. Agency Equity Teams shall include a combination of competitive service employees, as defined by 5 U.S.C. 2102(a), and appointees, as defined in Executive Order 13989 of January 20, 2021 (Ethics Commitments by Executive Branch Personnel), and, to the extent practicable, shall build upon and coordinate with the agency's existing structures and processes, including with the agency's environmental justice officer designated pursuant to Executive Order 14008 of January 27, 2021 (Tackling the Climate Crisis at Home and Abroad), and with the senior agency official designated to coordinate with the Gender Policy Council pursuant to Executive Order 14020 of March 8, 2021 (Establishment of the White House Gender Policy Council).

(ii) The senior designee at each agency shall be responsible for delivering equitable outcomes, to the extent consistent with applicable law, and shall report to the agency head.

(iii) Each Agency Equity Team shall support continued equity training and equity leadership development for staff across all levels of the agency's workforce.

(iv) Each agency's senior designee shall coordinate with the agency head, agency budget officials, and the Office of Management and Budget (OMB) to ensure that the Agency Equity Team has sufficient resources, including staffing and data collection capacity, to advance the agency's equity goals. Agency heads shall ensure that their respective Agency Equity Teams serve in an advisory and coordination role on priority agency actions.

(b) *Establishment of the White House Steering Committee on Equity.* There is hereby established a White House Steering Committee on Equity (Steering Committee), which shall be chaired by the Assistant to the President for

Domestic Policy. The Steering Committee shall include senior officials representing policy councils and offices within the Executive Office of the President, as appropriate. The Steering Committee shall:

- (i) coordinate Government-wide efforts to advance equity;
- (ii) coordinate an annual process to consult with agency heads on their respective agencies' Equity Action Plans, established in section 3(a) of this order;
- (iii) coordinate with the leadership of the White House Initiatives created by Executive Order 14031 of May 28, 2021 (Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders); Executive Order 14041 of September 3, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity Through Historically Black Colleges and Universities); Executive Order 14045 of September 13, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics); Executive Order 14049 of October 11, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Native Americans and Strengthening Tribal Colleges and Universities); and Executive Order 14050 of October 19, 2021 (White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Black Americans);
- (iv) coordinate with the White House Environmental Justice Interagency Council to ensure that equity and environmental justice efforts are consistent and mutually reinforcing;
- (v) coordinate with the White House Gender Policy Council to align efforts to advance gender equity with broader equity efforts; and
- (vi) monitor agencies' activities and promote accountability to ensure that agencies undertake ambitious and measurable steps to deliver equitable outcomes for the American people.

**Sec. 3. *Delivering Equitable Outcomes Through Government Policies, Programs, and Activities.*** Each agency head shall support ongoing implementation of a comprehensive equity strategy that uses the agency's policy, budgetary, programmatic, service-delivery, procurement, data-collection processes, grantmaking, public engagement, research and evaluation, and regulatory functions to enable the agency's mission and service delivery to yield equitable outcomes for all Americans, including underserved communities.

(a) In September 2023, and on an annual basis thereafter, concurrent with the agencies' submission to OMB for the President's Budget, agency heads shall submit an Equity Action Plan to the Steering Committee. The Equity Action Plan shall include actions to advance equity, including under Executive Order 13985, Executive Order 13988 of January 20, 2021 (Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation), Executive Order 14008, and Executive Order 14020.

(b) Each Equity Action Plan, which shall be made public, shall include:

- (i) an update on the progress made by the agency on the actions, performance measures, and milestones highlighted in the preceding year's Equity Action Plan, as well as the agency's performance on the annual Environmental Justice Scorecard established pursuant to section 223 of Executive Order 14008, as applicable;
- (ii) potential barriers that underserved communities may face in accessing and benefitting from the agency's policies, programs, and activities, including procurement, contracting, and grant opportunities;
- (iii) strategies, including new or revised policies and programs, to address the barriers described in subsection (b)(ii) of this section and to ensure equitable access and opportunity for underserved communities; and
- (iv) a description of how the agency intends to meaningfully engage with underserved communities, including through accessible, culturally and

linguistically appropriate outreach, and the incorporation of the perspectives of those with lived experiences into agency policies, programs, and activities.

(c) Starting with formulation of the Fiscal Year 2025 Budget and for each subsequent year, the Director of OMB shall consider how the President's Budget can support the Equity Action Plans described in subsection (a) of this section in order to reinforce agency efforts to meaningfully engage with and invest in underserved communities and advance equitable outcomes.

(d) To ensure effective implementation of Equity Action Plans, and to strengthen the Federal Government's equitable delivery of resources and benefits to all, agency heads shall:

(i) prioritize and incorporate strategies to advance equity—including by pursuing evidence-based approaches, reducing administrative burdens, increasing access to technical assistance, and implementing equitable data practices, consistent with applicable law, into their respective:

(A) agency strategic plans developed pursuant to 5 U.S.C. 306(a);

(B) agency performance plans developed pursuant to 31 U.S.C. 1115 and 1116;

(C) portions of performance plans relating to human and capital resource requirements to achieve performance goals pursuant to 31 U.S.C. 1115(b)(5)(A);

(D) agency priority goals developed pursuant to 31 U.S.C. 1120;

(E) evaluation and evidence-building activities pursuant to the Foundations for Evidence-Based Policymaking Act of 2018 (Public Law 115–435) and section 5 of the Presidential Memorandum of January 27, 2021 (Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking);

(F) customer experience capacity assessments and action plans pursuant to section 280 of OMB Circular A–11 and Executive Order 14058 of December 13, 2021 (Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government);

(G) selection of items for their respective regulatory agendas and plans pursuant to sections 4(b) and (c) of Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), as amended;

(H) individual performance plans for senior executives consistent with 5 U.S.C. 4312, and for other senior employees consistent with 5 U.S.C. 4302; and

(I) as permitted by law, activities, acquisitions, and strategies that the Director of OMB determines to be appropriate to further the implementation of this order;

(ii) identify opportunities, as appropriate and consistent with applicable law, to incorporate into new regulations and to modify their respective agencies' regulations, internal- and public-facing guidance, and other policies to include advancing equity as part of their respective agencies' missions; and

(iii) promote coordination within and among their respective agencies concerning the elements of their respective Equity Action Plans and the recommendations of the Interagency Working Group on Equitable Data established in Executive Order 13985.

#### **Sec. 4. *Embedding Equity into Government-wide Processes.***

(a) The Director of OMB shall consider opportunities to review and update internal processes, directives, and Government-wide guidance (such as OMB Circulars and Memoranda) to support equitable decision-making, promote equitable deployment of financial and technical assistance, and assist agencies in advancing equity, as appropriate and wherever possible.

(b) When designing, developing, acquiring, and using artificial intelligence and automated systems in the Federal Government, agencies shall do so, consistent with applicable law, in a manner that advances equity.

**Sec. 5. *Delivering Equitable Outcomes in Partnership with Underserved Communities.*** Underserved communities often face significant barriers and legacy exclusions in engaging with agencies and providing input on Federal policies and programs that affect them. Agencies must increase engagement with underserved communities by identifying and applying innovative approaches to improve the quality, frequency, and accessibility of engagement. Agencies shall, consistent with applicable law:

(a) conduct proactive engagement, as appropriate, with members of underserved communities—for example, through culturally and linguistically appropriate listening sessions, outreach events, or requests for information—during development and implementation of agencies’ respective annual Equity Action Plans, annual budget submissions, grants and funding opportunities, and other actions, including those outlined in section 3(d) of this order;

(b) collaborate with OMB, as appropriate, to identify and develop tools and methods for engagement with underserved communities, including those related to agency budget development and rulemaking;

(c) create more flexibilities, incentives, and guidelines for recipients of Federal funding and permits to proactively engage with underserved communities as projects are designed and implemented;

(d) identify funding opportunities for community- and faith-based organizations working in and with underserved communities to improve access to benefits and services for members of underserved communities; and

(e) identify and address barriers for individuals with disabilities, as well as older adults, to participate in the engagement process, including barriers to the accessibility of physical spaces, virtual platforms, presentations, systems, training, and documents.

**Sec. 6. *Creating Economic Opportunity in Rural America and Advancing Urban Equitable Development.*** (a) Agencies shall undertake efforts, to the extent consistent with applicable law, to help rural communities identify and access Federal resources in order to create equitable economic opportunity and advance projects that build community wealth, including by providing or supporting technical assistance; incentivizing the creation of good, high-paying union jobs in rural areas; conducting outreach to and soliciting input from rural community leaders; and contributing new resources and support to interagency programs such as the Rural Partners Network.

(b) Agencies shall undertake efforts, to the extent consistent with applicable law, to strengthen urban equitable development policies and practices, such as advancing community wealth building projects; preventing physical and economic displacement as the result of Federal investments; facilitating equitable flows of private capital, including to underserved communities; and incorporating outcome-based metrics focused on urban equitable development in the design and deployment of Federal programs and policies. To support these efforts, the Assistant to the President for Domestic Policy shall issue a policy memorandum on actions agencies can take to advance urban equitable development.

(c) Executive Order 13946 of August 24, 2020 (Targeting Opportunity Zones and Other Distressed Communities for Federal Site Locations), including the amendments it made to Executive Order 12072 of August 16, 1978 (Federal Space Management), and to Executive Order 13006 of May 21, 1996 (Locating Federal Facilities on Historic Properties in Our Nation’s Central Cities), is revoked. Executive Orders 12072 and 13006 are reinstated as they were prior to issuance of Executive Order 13946. Executive Order 13853 of December 12, 2018 (Establishing the White House Opportunity and Revitalization Council), is also revoked. All agencies shall, consistent

with applicable law, including the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), consider taking prompt action to revoke any rules, regulations, guidelines, or policies implementing these Presidential actions that are inconsistent with the provisions of this order. Further, agencies shall ensure that planning for new Federal facilities or new leases includes consideration of neighborhoods and locations that are near existing employment centers and are accessible to a broad range of the region's workforce and population by public transit (where it exists), consistent with Executive Order 12072. Agencies shall identify displacement risks associated with Federal facility siting and development and shall engage with any community that may be affected, along with appropriate regional and local officials, to mitigate those displacement risks.

**Sec. 7. *Advancing Equitable Procurement.*** (a) The Government-wide goal for Federal procurement dollars awarded to small business concerns owned and controlled by socially and economically disadvantaged individuals (SDBs) shall be 15 percent in Fiscal Year 2025. In furtherance of this goal, OMB shall set a Government-wide SDB goal for Fiscal Year 2024. The Small Business Administration shall, on an annual basis, work with each agency to establish an agency-specific goal that, in aggregate, supports the Government-wide goal. Further, agencies shall undertake efforts to increase contracting opportunities for all other small business concerns as described in the Small Business Act (15 U.S.C. ch. 14A).

(b) Agencies shall expand procurement opportunities for SDBs through Federal financial assistance, consistent with applicable law, under the Bipartisan Infrastructure Law, the Inflation Reduction Act of 2022, and other Federal financial assistance programs.

**Sec. 8. *Affirmatively Advancing Civil Rights.*** Agencies shall comprehensively use their respective civil rights authorities and offices to prevent and address discrimination and advance equity for all, including to increase the effects of civil rights enforcement and to increase public awareness of civil rights principles, consistent with applicable law. Agencies shall consider opportunities to:

(a) further elevate their respective civil rights offices, including by directing that their most senior civil rights officer report to the agency head;

(b) ensure that their respective civil rights offices are consulted on decisions regarding the design, development, acquisition, and use of artificial intelligence and automated systems;

(c) increase coordination, communication, and engagement with community-based organizations and civil rights organizations;

(d) increase the capacity, including staffing capacity, of their respective civil rights offices, in coordination with OMB;

(e) improve accessibility for people with disabilities and improve language access services to ensure that all communities can engage with agencies' respective civil rights offices, including by fully implementing Executive Order 13166 of August 11, 2000 (Improving Access to Services for Persons with Limited English Proficiency); and

(f) prevent and remedy discrimination, including by protecting the public from algorithmic discrimination.

**Sec. 9. *Further Advancing Equitable Data Practices.*** The Office of Science and Technology Policy (OSTP) National Science and Technology Council Subcommittee on Equitable Data shall, to the extent consistent with applicable law, coordinate the implementation of relevant recommendations of the Interagency Working Group on Equitable Data established in Executive Order 13985. The Director of OSTP shall provide a report on the Subcommittee's progress to the Steering Committee every January and July.

**Sec. 10. *Definitions.*** For purposes of this order:

(a) The term "equity" means the consistent and systematic treatment of all individuals in a fair, just, and impartial manner, including individuals who belong to communities that often have been denied such treatment,

such as Black, Latino, Indigenous and Native American, Asian American, Native Hawaiian, and Pacific Islander persons and other persons of color; members of religious minorities; women and girls; LGBTQI+ persons; persons with disabilities; persons who live in rural areas; persons who live in United States Territories; persons otherwise adversely affected by persistent poverty or inequality; and individuals who belong to multiple such communities.

(b) The term “underserved communities” refers to those populations as well as geographic communities that have been systematically denied the opportunity to participate fully in aspects of economic, social, and civic life, as defined in Executive Orders 13985 and 14020.

(c) The term “equitable development” refers to a positive development approach that employs processes, policies, and programs that aim to meet the needs of all communities and community members, with a particular focus on underserved communities and populations.

(d) The term “community wealth building” refers to an approach to economic development that strengthens the capacities of underserved communities by ensuring institutions and local economies have ownership models with greater community participation and control. This results in upgrading skills, growing entrepreneurs, increasing incomes, expanding net asset ownership, and fostering social well-being.

(e) The term “equitable data” refers to data that allow for rigorous assessment of the extent to which Government programs and policies yield consistently fair, just, and impartial treatment of all individuals.

(f) The term “algorithmic discrimination” refers to instances when automated systems contribute to unjustified different treatment or impacts disfavoring people based on their actual or perceived race, color, ethnicity, sex (including based on pregnancy, childbirth, and related conditions; gender identity; intersex status; and sexual orientation), religion, age, national origin, limited English proficiency, disability, veteran status, genetic information, or any other classification protected by law.

**Sec. 11. General Provisions.** (a) Nothing in this order shall be construed to impair or otherwise affect:

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

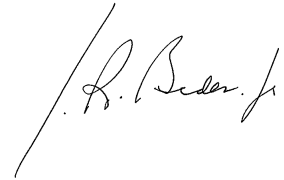
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

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

(c) Agencies not covered by section 2(a) of this order, including independent agencies, are strongly encouraged to comply with the provisions of this order.



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

A handwritten signature in black ink, appearing to read "Joe Biden", is written over a diagonal line that extends from the bottom left towards the top right.

THE WHITE HOUSE,  
*February 16, 2023.*

# Rules and Regulations

Federal Register

Vol. 88, No. 35

Wednesday, February 22, 2023

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

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

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

RIN 2900-AQ08

### Reimbursement for Emergency Treatment

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule with comments.

**SUMMARY:** The Department of Veterans Affairs (VA) is finalizing, with some changes, an interim final rule that amended its medical regulations concerning payment or reimbursement for emergency treatment for non-service-connected conditions at non-VA (community) facilities. This final rule responds to public comments received on the interim final rule and amends VA's emergency treatment regulations to authorize payment or reimbursement for coinsurance, temporarily waive the timely filing requirements for veterans affected by the interim final rule, and authorize payment or reimbursement for emergency transportation associated with emergency treatment when VA has paid for the emergency treatment using a separate authority. Because the change to § 17.1004 was not addressed in the Supplementary Information section of the interim final rule, VA believes the public should have an opportunity to comment on the change. Therefore, a 60-day comment period to address this single topic will be provided.

#### DATES:

**Effective date:** This final rule is effective April 24, 2023.

**Comment Date:** Comments on VA temporarily waiving the timely filing requirement must be received on or before April 24, 2023.

**ADDRESSES:** Comments must be submitted through [www.regulations.gov](http://www.regulations.gov). Except as provided below, comments received before the close of the comment period will be available at [www.regulations.gov](http://www.regulations.gov) for public viewing, inspection, or copying,

including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on the following website as soon as possible after they have been received: <http://www.regulations.gov>. VA will not post on [Regulations.gov](http://www.regulations.gov) public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm the individual. VA encourages individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking.

#### FOR FURTHER INFORMATION CONTACT:

Joseph Duran, Director, Policy and Planning VHA Office of Integrated Veteran Care (16IVC), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (303-370-1637). (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** In an interim final rule published in the **Federal Register** (FR) on January 9, 2018, 83 FR 974, VA amended its medical regulations pursuant to a decision from the Court of Appeals for Veterans Claims (Veterans Court), *Staab v. McDonald*, 28 Vet. App. 50 (2016), to authorize reimbursement for the costs of emergency treatment furnished in the community for a veteran's non-service-connected condition when the veteran is eligible for partial payment of these costs under a health-plan contract.

Among other changes made, the interim final rule clarified that VA would not pay or reimburse for a copayment, deductible, coinsurance, or similar payment owed by the veteran. 38 CFR 17.1005(a). In issuing the interim final rule, VA explained that VA is statutorily prohibited under section 1725(c)(4)(D) of title 38, United States Code (U.S.C.) from paying for or reimbursing a copayment or similar payment and VA interpreted "similar payment" to include both deductibles and coinsurance. 38 CFR 17.1005(a)(5); 83 FR 974 (January 9, 2018).

VA provided a 60-day comment period, which ended on March 12, 2018. Twelve comments were received, which

are described in detail in the following section of this discussion.

Following the comment period, on March 17, 2022, the United States Court of Appeals for the Federal Circuit (Federal Circuit) issued a decision, *Wolfe v. McDonough*, No. 2020-1958, on issues relating to a Writ of Mandamus granted by the Veterans Court. This case involved a challenge to VA's interpretation of 38 U.S.C. 1725(c)(4)(D) (that is, VA's prohibition on paying for copayments, coinsurance, and deductibles under 38 CFR 17.1005(a)(5)). In its opinion, the Federal Circuit interpreted 38 U.S.C. 1725(c)(4)(D) to exclude payment by VA of deductibles, but not coinsurance, as it found that a deductible is a similar payment to a copayment, but coinsurance is not.

However, the decision on the *Wolfe* appeal did not specifically invalidate or otherwise amend VA's regulations as they relate to the payment of coinsurance. Subsequent to the *Wolfe* decision, a petition for review was filed at the Federal Circuit on May 4, 2022. The petitioners in this case asked for the court to invalidate the portion of VA's regulation that prohibited payment of coinsurance. On October 25, 2022, the Federal Circuit issued an order directing VA to amend its regulations within 120 days to allow for the payment of coinsurance. *Kimmel v. Sec'y of Veterans Affs*, No. 2022-1754, 2022 U.S. App. LEXIS 29615 (Fed. Cir. Oct. 25, 2022).

For the reasons below and consistent with the *Wolfe* decision and subsequent order related to the *Kimmel* petition, this rulemaking will make final the interim final rule (83 FR 974) with changes and will permit an additional comment period on the limited issue of the timely filing requirement.

#### Public Comments

Twelve comments were received in response to the interim final rule. Several commenters expressed support for the rule. The remaining substantive comments are discussed in detail below.

#### Retroactivity

In the interim final rule, we stated that judicial decisions invalidating a statute or regulation, or VA's interpretation of a statute or regulation, cannot affect prior final VA decisions, meaning decisions that were not timely appealed and have thus become final.

As such, VA stated it will not retroactively pay benefits for claims filed under § 17.1002(f) that were finally decided before April 8, 2016, the date of the Veterans Court's *Staab* decision. We received multiple comments stating that VA should apply the amendments made in the interim final rule retroactively to February 1, 2010, the date of enactment of the Expansion of Veteran Eligibility for Reimbursement Act, Public Law 111-137 (hereinafter referred to as the "2010 Act").

One commenter stated that VA has the authority to consider these claims because section 1725 provides VA with broad authority to establish the claim and payment process. Another commenter stated that the *Staab* decision requires VA to provide reimbursement to veterans with claims pending on or after February 1, 2010, because the court stated that VA must re-adjudicate the appellant's claim, which was for reimbursement for treatment in December 2010. The commenter also stated that a judicial interpretation of a statute defines the meaning of the statute as of the date of enactment, not the date of the judicial decision. The commenter cited to the Federal Circuit's decision in *Patrick v. Shinseki*, 668 F.3d 1325, 1329 (Fed. Cir. 2011), to support that proposition.

We also received three comments concerning the need for retroactive application of the *Staab* decision from members of the United States Congress. Two of the comments were nearly identical. One was from the United States House of Representatives Committee on Veterans' Affairs and one was from members of the United States Senate. The comments requested that the interim final rule include those veterans whose claims were decided between the date of enactment of the 2010 Act, February 1, 2010, and the date of the *Staab* decision, April 8, 2016, so that veterans can take full advantage of a benefit Congress intended for them to receive. The Secretary of Veterans Affairs responded to these two comments in letters sent to each member of Congress who signed the two comments. The letter stated that the Secretary shared the concern of the members of Congress about veterans who, prior to the *Staab* decision, had their claims for reimbursement denied on the sole grounds that their health-plan contracts had made partial payments for their emergency treatment, thereby leaving them with personal liability for the remaining costs of that treatment.

Under 38 U.S.C. 7105(c), a decision of a VA agency of original jurisdiction (AOJ) that is not appealed in a timely

manner is considered final and the claim may not thereafter be reopened or allowed "except as provided by regulations not inconsistent with this title." Under 38 U.S.C. 7104(b), when a claim is disallowed by the Board of Veterans' Appeals (Board), it may not thereafter be reopened and allowed "[e]xcept as provided in section 5108 of this title." To the extent these statutes may be construed to permit VA by regulation to create additional exceptions to the finality of AOJ decisions, but not Board decisions, we decline to exercise that authority here. Such a rule would depart significantly from the well-established principle, discussed below, that new judicial interpretations of a statute do not provide a basis for reopening final decisions, and it would create an unfair distinction among claimants based upon whether their last final decision was issued by an AOJ or the Board. Moreover, as explained below, other authorities provide a basis for addressing claims involving expenses incurred on or after February 1, 2010, in a manner we believe to be more equitable and consistent with established precedents.

There are only two statutory exceptions to the rule of finality, new and material evidence and clear and unmistakable error, 38 U.S.C. 5108, neither of which authorizes VA to proactively re-open and re-adjudicate finally decided claims as a result of the *Staab* decision as suggested by the commenters. See 38 U.S.C. 5108, 5109A, and 7111; *Cook v. Principi*, 318 F.3d 1334, 1339 (Fed. Cir. 2002). As these two exceptions relate to the lines of reasoning raised by the commenters above, we do not believe that the authority provided in section 1725 authorizes VA to re-adjudicate the claims in a manner that is inconsistent with 38 U.S.C. 5108, 5109A, and 7111. In addition, we do not believe that the *Staab* decision requires VA to re-adjudicate all finally decided claims retroactive to the effective date of the law. Significantly, the court did not order VA to re-adjudicate all finally decided claims from the date of enactment; instead, the court vacated the Board's decision that denied Mr. Staab's individual claim and ordered VA to re-adjudicate Mr. Staab's individual claim, which was not finally decided because he filed a timely appeal. In order to adjudicate the claim and address the court's invalidation of § 17.1002(f), VA amended its payment regulations to establish a payment methodology for claims, like Mr. Staab's, that involve partial payment by

a health-plan contract. The *Staab* decision did not address and does not govern VA's authority to apply the new methodology to claims that were finally decided prior to the decision.

Further, in *George v. McDonough*, 142 S. Ct. 1953, the Court held that invalidation of a VA regulation after a veteran's benefits decision becomes final cannot support a claim for collateral relief based on clear and unmistakable error. Therefore, neither the *Staab* decision, nor later decisions in the Wolfe or Kimmel matters create a clear and unmistakable error that would allow for readjudication of already denied claims.

However, when an intervening and substantive change in law occurs and creates a new basis for entitlement to a benefit (e.g., judicial interpretation and invalidation of a regulation results in expansion of entitlement to a benefit), VA may review a new claim based on the same facts as the finally decided claim. *Spencer v. Brown*, 17 F.3d 368, 372 (Fed. Cir.) (1994). In this situation, individuals whose claims were finally decided prior to the change in law may submit new claims to be adjudicated under the revised standard. We therefore explained to the members of Congress that VA can reach claims that were finally decided prior to the *Staab* decision (on the sole grounds that partial payment would be, or had been, made under the veterans' health-plan contract), if the veterans or providers file new claims for the same benefits that were previously denied. VA further explained that we will adjudicate claims from providers or veterans who, due to their awareness of the former interpretation of the law (former § 17.1002(f)), chose not to file claims because partial payment had been made or would be made under the veterans' health-plan contracts. The Secretary also informed the members of Congress that we would create a solution, through amendatory rulemaking, to avoid denial of these claims as untimely under the current filing deadlines specified in regulation. It was further explained that all providers or veterans seeking reimbursement under the revised regulation would be required to submit evidence showing the amount paid by their health insurance plan and the amount of the veteran's remaining liability. The reason for this requirement is explained below.

The third Congressional comment (from the Senate Committee on Veterans' Affairs) stated that the timely filing requirement for these claims should be waived completely. The comment further stated that VA should proactively reach out to veterans whose

claims were denied under the previous regulations because making veterans refile their claims would be unduly burdensome and create a barrier to filing that will disproportionately impact veterans whom the comment described as already being vulnerable.

VA agrees that it is necessary to provide the two groups of claimants described above with an opportunity to file new claims for payment or reimbursement of emergency treatment costs incurred in the community on or after February 1, 2010, up to April 8, 2016 (the date of the *Staab* decision), and to adjudicate these claims under the new legal standard, subject to the one-year filing deadline established in § 17.1004(f), as revised by this final rule. To simply waive the timely filing requirement for these claims would be problematic, however, as it would prevent VA from being able to reliably forecast budgetary and other claims processing needs relative to these claims. Moreover, health insurance claims are generally processed in accordance with firm time limits established by the governing contracts, including those applicable to the carriers' appeals processes. Thus, the amounts paid under veterans' health-plan contracts have already been identified. Unless these records are no longer retained by the carriers, this historical information exists and can be requested. In the alternative, the veteran may have personal possession of these historical records. In either event, VA believes that a one-year filing deadline is reasonable and gives these claimants an adequate opportunity to seek payment or reimbursement for costs incurred during the covered time-period. VA will therefore not waive the timely filing requirement for claimants affected by the *Staab* decision.

In order to address the concerns raised, and in response to comments that VA received on the IFR, VA will amend § 17.1004 to afford veterans affected by the *Staab* decision an opportunity to file a new claim based on the change in law. Specifically, VA is amending § 17.1004(f), which currently provides an exception to the timely filing requirements in § 17.1004(d) for dates of service between July 19, 2001, and 90 days before May 21, 2012, if the claimant files a claim for reimbursement no later than one year after May 21, 2012. Because the time frame for the waiver in current § 17.1004(f) has passed, we will amend this paragraph by removing the previous time frame for the waiver and, in its place, allow claimants to file a claim, notwithstanding paragraph (d) of this section, for reimbursement of costs of

non-VA emergency treatment rendered on or after February 1, 2010 and more than 90 days before February 22, 2023 for which partial payment was paid or payable under the veterans' health-plan contracts, provided the claimants file their claims for reimbursement no later than one year after February 22, 2023. This amendment will thus provide all claimants affected by the *Staab* decision, regardless of whether they previously filed claims for reimbursement, an opportunity to submit a claim for payment or reimbursement of the costs of non-VA emergency treatment they received on or after the effective date of the 2010 Act.

VA has additionally determined that anyone who had been potentially adversely affected by the issues raised in the *Wolfe* litigation, or the subsequent *Kimmel* petition, would fall within this waiver period. Therefore, they would also be able to seek adjudication of their claims under the new standard. To the extent the issues here are distinct from those raised by the *Staab* case, the inclusion within these timeframes will still allow for those issues to be addressed.

As a matter of prudence, and because this precise change to § 17.1004 differs from the interim final rule, VA is inviting the public to comment on the change. Therefore, a 60-day comment period to address this single topic will be provided.

### Copayments and Similar Payments

Section 1725(c)(4)(D) prohibits VA from reimbursing a veteran for a copayment or similar payment that the veteran owes a third party or is responsible to pay under a health-plan contract. The interim final rule interpreted "similar payment" to include deductibles and coinsurance. We received multiple comments that coinsurance and deductibles are not "similar payments" to copayments and should be removed from the list of payments for which VA will not provide reimbursement. Following the public comment period, the Federal Circuit's order regarding the *Kimmel* petition held that coinsurance was the type of payment envisioned by Congress that VA would pay or reimburse while deductibles were similar to copayments and therefore prohibited from payment or reimbursement pursuant to 38 U.S.C. 1725(c)(4)(D).

Consistent with this decision, we are removing coinsurance from the list of prohibited payments in § 17.1005(a)(5) but will not remove deductibles from that list.

The following discussion specifically addresses the related comments we received during the public comment period on this issue.

Commenters explained that a copayment, by definition, is distinguishable from other forms of cost-sharing, such as deductibles and coinsurance, and that copayments result in much lower liabilities than deductibles and coinsurance. The commenters stated that each term is a "term of art" with a specific, accepted, meaning and that the term copayment cannot be read to include these different obligations. One commenter defined copayment as the set dollar amount the patient pays for care after the deductible is paid, deductible as the amount an insured must pay each year before the insurance source pays its share, and coinsurance as the percent of costs the enrollee must pay. Another commenter similarly defined a copayment as a fixed, flat fee, amount paid by an insured for each particular covered health care service after paying any deductible, a deductible as a fixed amount an insured pays each year for eligible medical services or medicines before insurance will make any payment, and coinsurance as a portion of all the medical costs that an insured must pay of all costs subject to the coinsurance.

In *Wolfe v. McDonough*, No. 2020–1958, Fed. Cir. (Mar. 17, 2022), the Federal Circuit indicated that copayments and deductibles were similar payments, as they are both fixed quantities which become known once insurance is purchased, while coinsurance is a variable quantity that becomes known after medical expenses are incurred. The Federal Circuit also found that the legislative history supports that deductibles were intentionally excluded from reimbursement as a similar payment but coinsurance was not. Later, in the response to the *Kimmel* petition, the Federal Circuit determined that coinsurance was the type of payment envisioned by Congress that VA would pay or reimburse while deductibles were similar to copayments and therefore prohibited from payment or reimbursement pursuant to 38 U.S.C. 1725(c)(4)(D).

Several commenters stated that the rules of statutory construction require us to presume Congress meant what it said and that, in other statutory contexts, Congress has not used the specific term, copayment, to include other forms of cost-sharing. One commenter noted that they do not believe there is a Congressional reference to copayments that includes

coinsurance and deductibles. The commenters provided the following examples: 38 U.S.C. 1729(a)(3) uses “deductible or copayment;” under the essential health benefit limitations on cost-sharing, Congress refers to “copayments and coinsurance;” in establishing premium and cost sharing subsidies for low-income individuals, Congress made reference to copayment separately from coinsurance; and in the statutory authority for VA to require copayments for medications, the law referred to copayments and did not include coinsurance or deductibles. The commenters stated that had Congress intended deductibles or coinsurance be excluded from reimbursement, it would have used such language.

To clarify, VA does not believe that Congress intended for the term “copayment” in section 1725(c)(4)(D) to, by itself, encompass deductibles. Instead, VA believes it is the phrase “or similar payment” that is intended to include other forms of cost sharing, such as deductibles. VA agrees that we must presume Congress meant what it said, and in section 1725, Congress said “copayment or similar payment.” A statute must be interpreted, “so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.” *Corley v. United States*, 556 U.S. 303, 304 (2009). To find meaning in the phrase “similar payment,” VA must identify and consider other payments for which a veteran is responsible under a health plan contract. VA can find no payment more similar to a copayment than a deductible, which serves as a fixed-amount cost-sharing measure to which the insured freely agrees to pay as a condition of insurance coverage. As noted in *Wolfe*, similar payments necessarily means that some payments that are not copayments are similar payments. The Federal Circuit found that deductibles were envisioned by Congress to be similar to copayments and thus prohibited from payment or reimbursement. The Federal Circuit looked at the legislative history for 38 U.S.C. 1725 and determined that it supports that Congress intentionally excluded deductibles from reimbursement as a similar payment.

Another commenter stated that VA did not provide any legal authority to broaden the statutory language in section 1725(c)(4)(D) to include deductibles and coinsurance. We disagree. First, Congress explicitly gave VA broad authority to implement section 1725 in regulations prescribed by the Secretary. Specifically, section 1725(c)(1)(B) provides that, “The Secretary, in accordance with

regulations prescribed by the Secretary, shall . . . delineate the circumstances under which such payments may be made . . . .” Moreover, as crafted, the language of section 1725(c)(4)(D) plainly allows for other payments to be included within its scope, provided they are similar to the one named. As noted throughout this discussion, the Federal Circuit in *Wolfe* and *Kimmel* acknowledged that inclusion of the phrase “similar payments” in the statute necessarily means that some payments that are not copayments are similar payments. The Federal Circuit interpreted section 1725(c)(4)(D) and its legislative history to determine that a deductible is a similar payment to a copayment and thus excluded from payment or reimbursement. For these reasons, we believe that VA has authority to interpret the phrase “or similar payment” in paragraph (4)(D) of subsection (c).

The commenters also stated that the legislative history and the Veterans Court’s *Staab* decision provide that the purpose of the 2010 Act was to make VA responsible for the cost (of the emergency treatment) exceeding the amount payable or paid by the third-party insurer, noting that a deductible or coinsurance amount is not payable or paid by the third-party insurer. VA agrees that part of the legislative history related to the 2010 Act and the *Staab* decision each reflect an expectation or understanding that the 2010 Act amendments effectively enable VA to pay the entire remainder owed to the emergency provider after partial payment is made or payable under the veteran’s health-plan contract. However, even if this were intended, the 2010 Act did not accomplish this goal. The still relevant provisions of section 1725(c) explicitly require VA to limit the amount of reimbursement available under section 1725. Indeed, the header for subsection (c) is “Limitations on reimbursement.” To this end, section 1725(c)(1) directs VA to promulgate regulations that limit payment, to include establishing a maximum amount payable under section 1725. In addition, section 1725(c)(4)(D) expressly prohibits VA from reimbursing a veteran for any copayment or similar payment that the veteran owes the third party or for which the veteran is responsible under a health-plan contract. These, along with the other likewise intact provisions of subsection (c), reflect a continuing requirement to limit the budgetary impact of section 1725. If the drafters of the 2010 Act believed that VA’s secondary payment would cover all of the eligible veterans’ out-of-pocket

costs, we conclude that they failed to execute all the amendments needed to accomplish this, and the Federal Circuit confirmed this by its interpretation of the statute.

Multiple commenters mentioned that the bar on reimbursement of deductibles and coinsurance acts as a disincentive to purchasing health insurance coverage. They suggest that the exclusion of veterans’ out-of-pocket (cost sharing) costs could result in veterans foregoing the purchase of health insurance, leaving VA with increased costs as their sole payer. One of the commenters stated that veterans will always have personal liability if they have Medicare Part B and the proposed change will do nothing to resolve the veteran’s personal liability. The commenter further stated that it will encourage veterans to discontinue their Medicare Part B and recommends that the rule require veterans to have Medicare Part B.

As discussed above, VA interprets “similar payments” to include deductibles; thus, VA does not have authority to reimburse these costs. As a matter of policy, VA interprets “similar payments” this way in order to avoid any conflict with the Federal Circuit. VA acknowledges that veterans who do not have health insurance would likely pay no out-of-pocket costs while veterans who do have health insurance may have out-of-pocket costs resulting from their cost share obligations. Nonetheless, VA does not believe that this potential disparity will deter veterans from purchasing health insurance. Most veterans enrolled in the VA health care system have an additional type of health insurance coverage. It seems unlikely that they would forego their health insurance protection for all other medical conditions, which are likewise subject to their plan’s deductible requirements, merely to avoid having to pay copayments and similar payments owed in connection with the receipt of non-VA emergency treatment. Again, these are cost shares that they freely agreed to pay in exchange for health insurance coverage independent of their VA benefits. Ultimately, whether to keep or obtain health insurance is a personal financial decision for veterans enrolled in VA’s health care system to make based on their own needs, financial capability, and preferences.

As it concerns veterans who are eligible for reimbursement under section 1725 and who also have coverage for emergency treatment under Medicare Part A, VA has no authority to require that they be enrolled in Medicare Part B as a condition of

payment or reimbursement under section 1725.

Based on these comments and the *Wolfe* decision and *Kimmel* order, we are removing coinsurance from the list of prohibited payments in § 17.1005(a)(5) but will not remove deductibles from that list. We are also retaining the “or similar payment” qualifier on the end of the list to maintain the flexibility originally envisioned by Congress’s initial inclusion of the phrase in section 1725. Retaining “or similar payment” allows VA to be flexible in the future, should some new type of health care cost sharing arise.

#### Payment Limitations

Several commenters raised a concern that VA’s payment limitation of 70 percent of the Medicare fee schedule rate was too low. The commenters requested that VA amend the rule to pay the fair market value for the services rendered. One commenter explained that payment below the fair market value could jeopardize the financial viability of the emergency care safety net.

To clarify, the scope of this rulemaking is to amend VA’s regulations to comply with case law interpreting the scope of VA’s reimbursement authority. Therefore, this rulemaking only affects reimbursement when the veteran has partial payment from a third party; it does not affect the amount VA will pay when the veteran has no other coverage, which is governed by a different provision of the payment regulation. When the veteran has partial payment for the emergency treatment expenses from a third party, VA is the secondary payer. Under the amended payment regulation, VA pays the lesser of: the amount for which the veteran is still personally liable after payment by a third party (including a health-plan contract); or 70 percent of the applicable Medicare fee schedule rate.

For example, a veteran has an initial liability of \$100 dollars. 70 percent of the Medicare fee schedule is \$70 and the veteran’s health-plan contract paid the provider 80 percent of the Medicare fee schedule rate (\$80). If the veteran has remaining liability to the provider (other than a copayment, deductible or similar payment), then VA would still be able to pay up to \$20 towards the veteran’s remaining liability even after the payment of \$80 from the health plan contract. Although VA can pay up to 70 percent of the Medicare fee schedule, which is \$70, the veteran’s remaining liability in this instance would only be \$20 after deducting the health-plan

contract’s payment of \$80 from the \$100 liability. As secondary payer, VA’s maximum allowable amount is in addition to the amount already paid (or payable) by the health-plan contract. For this reason, VA believes that emergency treatment providers will ultimately receive at least fair market value for their services; consequently, this final rulemaking will not jeopardize the financial viability of emergency departments. VA does not make any changes to the rule based on these comments.

Other commenters stated that the low reimbursement rate would encourage health care professionals to deny treatment to veterans for fear of inadequate reimbursement. All veterans affected by this rulemaking already have coverage for emergency treatment expenses under their health-plan contracts, with rates presumably negotiated (by the carriers and providers) to ensure adequate reimbursement. Again, VA is secondary payer to these contracts. The combined payment by the primary payer (health-plan contract) and VA for the same emergency treatment episode should thus provide adequate reimbursement, as discussed above.

In addition, a Medicare-participating hospital with an emergency department that denies emergency care to an individual due to the individual’s inability to pay would arguably violate the Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. 1395dd, as amended. Under EMTALA, if any individual (regardless of Medicare-eligibility) seeks examination or treatment for a medical condition at a covered hospital, then the hospital must provide a screening examination to determine whether an emergency medical condition exists. If so, the hospital is, in general, required to furnish needed emergency treatment until the individual is stabilized and able to be transferred irrespective of the patient’s ability to pay. For these reasons, we do not make any changes to the rule based on these comments.

Another commenter stated that Congress did not intend for VA to set such a low rate and cited to a study that found that in-network emergency physician claims were paid at 297 percent of the Medicare rate and out-of-network emergency physicians charged an average of 798 percent of the Medicare rate. The legislative history from when 38 U.S.C. 1725 was originally enacted demonstrates that Congress intended for VA to set a rate that is lower than the Medicare fee schedule rate. The legislative history reads, “The Committee thus envisions

that VA would establish rates that are significantly below those paid under the Medicare or Medicaid system (or under 38 United States Code, section 1728).” House Report 106–237 (July 16, 1999). Therefore, VA believes that the rate it set is precisely what Congress envisioned, and we do not make any changes to the rule based on this comment.

The commenter also noted that the interim final rule permits emergency providers to reject the payment amount, which would presumably leave the veteran fully responsible for the payment. Given the low rate, the commenter feared that these providers may reject the amount and seek full payment from the veteran. As noted above, VA has been paying 70 percent of the applicable Medicare fee schedule rate in instances when VA is the sole payer ever since the regulations were effective on May 29, 2000 (66 FR 36470) (unless, of course, the amount owed to the provider was less than 70 percent of the Medicare fee schedule rate, thereby requiring the lesser amount to be paid). Since that time, very few, if any, of VA’s payments have been rejected, presumably because these debts would have otherwise been written off by the providers. Because emergency providers may view the new cohort of veterans covered by the court’s decision as having the ability to self-pay more than the VA allowable amount, we have devised a payment methodology to reduce the likelihood that the providers will reject VA payment. Emergency providers will be receiving greater than 70 percent of the Medicare fee schedule rate; again, they will receive a combined payment comprised of the third party’s payment and VA’s payment. At this time, and in the absence of compelling evidence requiring a changed approach, we decline to make any changes to the rule based on this comment.

One commenter sought clarification on liability for cost-sharing. In particular, the commenter asked whether a veteran’s cost sharing responsibilities are also extinguished if a health care provider accepts payment from VA for the emergency treatment. We clarify that some of the veteran’s cost sharing obligations, such as a copayment or deductible, are not extinguished by VA payment. Those are contractual payment obligations, non-reimbursable by VA, that are owed by the veteran to the provider, consistent with the terms of the veteran’s health-plan contract. We do note however, under this amended rule, VA will pay or reimburse for a veteran’s coinsurance as part of its underlying payment for medical treatment. Therefore,

acceptance of payment from VA will extinguish any coinsurance responsibility on the part of the veteran. See 38 CFR 17.1005(a)(4). We do not make any changes to the rule based on this comment.

#### Miscellaneous

One commenter requested that VA provide clarity on two provisions in the regulations. The first provision is the prudent layperson standard in 38 CFR 17.1002(b). The regulation provides that, in order to receive reimbursement, the veteran must have sought care for which a prudent layperson would have reasonably expected that delay in seeking immediate medical attention would have been hazardous to life or health. The commenter recommended that VA provide a list of services that would meet this standard to ensure that emergency treatment claims filed by veterans are not improperly rejected. The commenter suggested that VA adopt the list from the American College of Emergency Physicians. VA appreciates the commenter's suggestion, but the scope of the rulemaking is narrowly limited to amending VA's regulations to comply with the *Staab* and *Wolfe* decisions and the *Kimmel* order by permitting reimbursement when the veteran has partial payment from a health-plan contract. Therefore, this comment is beyond the scope of this rulemaking, and we do not make any edits based on the comment. However, VA will continue to monitor the program and consider whether additional rulemaking may be necessary in the future.

The commenter also requested that VA amend the rule to affirmatively state that VA cannot deny a claim after a veteran passes away if the emergency medical treatment is furnished prior to the veteran's death. The commenter noted that the interim final rule states that reimbursement is not available if death occurs before emergency treatment is provided. We want to clarify that the interim final rule does not state that reimbursement is not available if death occurs before emergency treatment is provided. Instead, the interim final rule provides that VA can provide reimbursement for emergency transportation even if the veteran passes away before emergency treatment is rendered at the community hospital. While VA appreciates the suggestion, VA believes that the interim final rule, in conjunction with the explanation provided here, is sufficiently clear that reimbursement can be provided even if the veteran passes away. Therefore, we do not make

any changes to the rule based on this comment.

One commenter expressed a concern about whether and how VA informs a veteran when the veteran has an outstanding debt with a medical facility and the veteran's first notification comes in the form of a debt collection letter. The commenter explained that a veteran received a letter from a local hospital and it took four months to determine that there was no outstanding balance on the veteran's account and the letter was sent as a result of a bookkeeping error on the part of the hospital. Although VA is sympathetic to the veteran we note that this is scenario is not representative of most instances of reimbursement for emergency treatment. However, this rulemaking expands eligibility criteria for reimbursement for the costs of emergency treatment rendered by community emergency providers to veterans for their non-service-connected conditions. Because the comment is beyond the scope of this rulemaking, we do not make any changes to the rule based on this comment.

One commenter inquired as to why they were taken to a community hospital when a VA medical center was less than eight minutes away. The commenter received a bill for the transportation to the community hospital. The commenter also discussed the poor treatment rendered by the community hospital, as perceived by the commenter. To the extent that the commenter seeks reimbursement for the costs of transport to the community hospital, we invite the commenter to file an emergency transportation claim under section 1725 as implemented by 38 CFR 17.1003 and 17.1004. But again, because this rulemaking only expands eligibility requirements for reimbursement of the costs of emergency treatment rendered by community hospitals for veterans' non-service-connected conditions, this comment is beyond the scope of the rulemaking. No changes are made to the rule based on these comments.

We also received one comment regarding Executive Order 13771. This rulemaking was not affected by Executive Order 13771. Therefore, this comment is beyond the scope of the rulemaking, and we do not make any changes to the rule based on the comment.

#### Changes to § 17.1003

While we did not receive any public comments on this issue we are amending § 17.1003(a)(1) as a logical outgrowth of the interim final rule to add VA as a clarifying example of payor

of emergency treatment which would not forestall eligibility for emergency transportation.

In the interim final rule, we amended § 17.1003 to add paragraph (a)(1) which provides that payment or reimbursement for ambulance services may be made if payment or reimbursement would have been authorized under 38 U.S.C. 1725 for emergency treatment had the veteran's personal liability for the emergency treatment not been fully extinguished by payment by a third party, including under a health-plan contract. VA amended § 17.1003 in the interim final rule to address a long-standing tension in § 17.1003 with VA's interpretation that emergency transportation is part of emergency treatment. VA has historically interpreted the phrase "emergency treatment" in section 1725(f)(1) to include emergency transportation if the transportation is provided as part of the emergency medical treatment administered at the non-VA facility. However, § 17.1003 did not allow VA to pay for the transportation if the liability for the emergency treatment had already been extinguished by a third party. The interim final rule explained that if VA's sole basis to deny a transportation claim is satisfaction by a third party of the related emergency treatment claim, even if that transportation claim meets all of the other requirements for reimbursement under 38 U.S.C. 1725, VA would be, in effect, treating the emergency transportation claim differently than the related emergency treatment claim. Therefore, in order to make § 17.1003 consistent with VA's interpretation that the emergency transportation is part of the claim for emergency treatment, VA amended § 17.1003 to ensure that payment or reimbursement for emergency transportation would not be prohibited on the sole basis that the emergency treatment claim was fully extinguished. While in the interim final rule VA only referenced liability being extinguished by a third party, VA believes that the public was sufficiently put on notice that the intended effect of the change was to ensure emergency transportation under § 17.1003 would not be prohibited on the sole basis that the emergency treatment was fully extinguished by another source.

In this rulemaking we revise § 17.1003(a)(1) by adding the phrase "or by VA" after health plan contract. This addition is necessary to ensure that, consistent with the interpretation discussed above, VA can pay or reimburse for emergency transportation under section 1725 even if VA

extinguishes the liability for the underlying emergency treatment using a different authority, such as under VA's Community Care Program at 38 CFR 17.4020(c).

Thus, we are revising § 17.1003(a)(1) to make clear that a veteran may be reimbursed for ambulance services made for transporting a veteran to a facility if payment or reimbursement would have been authorized under section 1725 for emergency treatment had the veteran's personal liability for the emergency treatment not been fully extinguished by a third party, to include under a health plan contract, or by VA. Based on the rationale set forth in the Supplementary Information sections of the interim final rule and this final rule, VA is adopting as final the interim final rule with the changes stated in this final rule.

#### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at [www.regulations.gov](http://www.regulations.gov).

#### Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This rule would not cause a significant economic impact on small entities since this exemption is limited to individual veterans who VA determines to be affected by the Stabb or Wolfe cases. Only individual veterans are affected by the virtue of being able to submit claims for coinsurance reimbursement. Individuals are not the small entities, they cannot be broken out by appropriate size standard, number affected, and business revenue. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603

and 604 do not apply. Although some eligible entities or providers that furnished emergency care and services to veterans under this authority may be considered small entities, there will be no significant adverse economic impact because this rule does not create a new payment obligation on such entities; it merely creates a new payment methodology for services already rendered.

#### Unfunded Mandates

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

#### Paperwork Reduction Act

This final rule involves a collection of information that is controlled by the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). While there are no provisions associated with this rulemaking constituting a new collection of information, the changes to reimbursement may constitute substantive revisions to the existing collection of information. The Office of Management and Budget (OMB) previously approved a Paperwork Reduction Act (PRA) clearance for information collected pursuant to 38 U.S.C. 1725 under OMB control number 2900–0620, which expired on July 31, 2018. The collection of information is being processed for a reinstatement of the PRA clearance from OMB through a separate **Federal Register** notice (FRN) published in the **Federal Register**. The FRN will provide the public with an opportunity to comment on the information collection and any revisions for Payment or Reimbursement for Emergency Services for Nonservice-Connected Conditions in Non-Department Facilities. A final FRN also will be published in the **Federal Register** when the collection of information is submitted to OMB for approval of the PRA clearance renewal.

#### Congressional Review Act

Under the Congressional Review Act, this regulatory action may result in an annual effect on the economy of \$100 million or more, 5 U.S.C. 804(2), and so is subject to the 60-day delay in effective date under 5 U.S.C. 801(a)(3). In accordance with 5 U.S.C. 801(a)(1),

VA will submit to the Comptroller General and to Congress a copy of this Regulation and the Regulatory Impact Analysis (RIA) associated with the Regulation.

#### List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Claims, Health care, Health facilities, Health professions, Health records, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

#### Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on December 30, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

#### Consuela Benjamin,

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

For the reasons stated in the preamble, the interim final rule amending 38 CFR part 17, which was published at 83 FR 974 on January 9, 2018, is adopted as final with the following changes:

#### PART 17—MEDICAL

- 1. The general authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, and as noted in specific sections.

\* \* \* \* \*

- 2. Amend § 17.1003 by revising paragraph (a)(1) to read as follows:

#### § 17.1003 Emergency transportation.

(a) \* \* \*

(1) The veteran's personal liability for the emergency treatment not been fully extinguished by payment by a third party, including under a health-plan contract, or by VA; or

\* \* \* \* \*

- 3. Amend § 17.1004 by revising paragraph (f) to read as follows:

#### § 17.1004 Filing claims.

\* \* \* \* \*

(f) Notwithstanding paragraph (d) of this section, VA will provide retroactive payment or reimbursement for emergency treatment received by the veteran, on or after February 1, 2010 but more than 90 days before February 22, 2023, if the claimant was eligible for partial payment from a health-plan contract for the emergency treatment and the claimant files a claim for



reimbursement no later than 1 year after February 22, 2023.

\* \* \* \* \*

■ 4. Amend § 17.1005 by revising paragraph (a)(5) to read as follows:

**§ 17.1005 Payment limitations.**

(a) \* \* \*

(5) VA will not reimburse a veteran under this section for any copayment, deductible, or similar payment that the veteran owes the third party or is obligated to pay under a health-plan contract.

\* \* \* \* \*

[FR Doc. 2023-03339 Filed 2-21-23; 8:45 am]

BILLING CODE 8320-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[EPA-HQ-OAR-2018-0747; FRL-6934.1-02-OAR]

RIN 2060-AV38

### National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing Technology Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is taking final action on the technology review conducted on the Miscellaneous Coating Manufacturing (MCM) source category regulated under the National Emission Standards for Hazardous Air Pollutants (NESHAP). These final amendments include provisions for inorganic hazardous air pollutant (HAP) standards for process vessels.

**DATES:** This final rule is effective February 22, 2023.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2018-0747. All documents in the docket are listed on the <https://www.regulations.gov/> website. Although listed, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. With the exception of such material, publicly available docket materials are available electronically in <https://www.regulations.gov/> or in hard copy at

the EPA Docket Center, Room 3334, WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** For questions about this final action, contact Ms. Angie Carey, Sector Policies and Programs Division (E143-01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-2187; fax number: (919) 541-0516; and email address: [carey.angela@epa.gov](mailto:carey.angela@epa.gov).

#### SUPPLEMENTARY INFORMATION:

*Preamble acronyms and abbreviations.* Throughout this document the use of “we,” “us,” or “our” is intended to refer to the EPA. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

1-BP 1-bromopropane  
CAA Clean Air Act  
CFR Code of Federal Regulations  
EJ Environmental Justice  
EPA Environmental Protection Agency  
FR Federal Register  
gr/dscf grains per dry standard cubic feet  
HAP hazardous air pollutant(s)  
ICR Information Collection Request  
km kilometer  
MACT maximum achievable control technology  
MCM miscellaneous coating manufacturing  
NESHAP national emission standards for hazardous air pollutants  
NTTAA National Technology Transfer and Advancement Act  
OMB Office of Management and Budget  
PRD pressure release devices  
PM particulate matter  
PRA Paperwork Reduction Act  
RFA Regulatory Flexibility Act  
RTR residual risk and technology review  
µg/m<sup>3</sup> microgram per cubic meter  
UMRA Unfunded Mandates Reform Act  
VCS voluntary consensus standards

*Organization of this document.* The information in this preamble is organized as follows:

#### I. General Information

##### A. Does this action apply to me?

B. Where can I get a copy of this document and other related information?

##### II. Background

A. What is the statutory authority for this action?

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#### I. General Information

##### A. Does this action apply to me?

Table 1 of this preamble lists the NESHAP and associated regulated industrial source categories that are the subject of this final rule. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this final rule is likely to affect. These final standards, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities would not be affected by this final rule. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (see 57 FR 31576; July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (see EPA-450/3-91-030; July 1992), the Manufacture of Paints, Coatings, and Adhesives source category “is any facility engaged in their manufacture without regard to the

particular end-uses or consumers of such products. The manufacturing of these products may occur in any combination at any facility.” This source category has since been renamed Miscellaneous Coating Manufacturing (MCM).

TABLE 1—NESHAP AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS FINAL ACTION

Source category and NESHAP	NAICS code <sup>1</sup>
Miscellaneous Coating Manufacturing Industry .....	3255, 3259

<sup>1</sup> North American Industry Classification System.

*B. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this final action at <https://www.epa.gov/stationary-sources-air-pollution/miscellaneous-coating-manufacturing-national-emission-standards>. Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the final rule and key technical documents at this same website.

## II. Background

*A. What is the statutory authority for this action?*

This final rule amends the National Emission Standards for Hazardous Air Pollutants (NESHAP): Miscellaneous Coating Manufacturing, which was previously amended when the EPA finalized the Residual Risk and Technology Review (RTR) on August 14, 2020.<sup>1</sup>

In the *Louisiana Environmental Action Network v. EPA (LEAN)* decision issued on April 21, 2020, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) held that the EPA has an obligation to address unregulated emissions from a source category when the Agency conducts the 8-year technology review required by Clean Air Act (CAA) section 112(d)(6).<sup>2</sup> To meet this obligation, the EPA issued a proposed rule to address unregulated emissions of HAP from the MCM source category. Inorganic HAP can be emitted from sources in the MCM category as part of a source's particulate matter

(PM) emissions. These emissions can occur when raw materials in powder form are added to paint mixing vessels. Therefore, amendments were proposed to define the maximum achievable control technology (MACT) standard for inorganic HAP within the MCM source category pursuant to CAA sections 112(d)(2) and (3).

*B. What is this source category and how does the current NESHAP regulate its organic and inorganic HAP emissions?*

As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990*<sup>3</sup> and *Documentation for Developing the Initial Source Category List* (Final Report),<sup>4</sup> the “manufacture of paints, coatings, and adhesives” source category “is any facility engaged in their manufacture without regard to the end-uses or consumers of such products. The manufacturing of these products may occur in any combination at any facility.”

The MCM source category includes the collection of equipment that is used to manufacture coatings at a facility. MCM operations also include cleaning operations. Coatings are materials such as paints, inks, or adhesives that are intended to be applied to a substrate and consist of a mixture of resins, pigments, solvents, and/or other additives, where the material is produced by a manufacturing operation where materials are blended, mixed, diluted, or otherwise formulated. Coatings do not include materials made in processes where a formulation component is synthesized by a chemical reaction or separation activity and then transferred to another vessel where it is formulated to produce a material used as a coating, where the synthesized or separated component is not stored prior to formulation.

The equipment regulated by the MCM NESHAP includes process vessels, storage tanks for feedstocks and

products, equipment leak components (pumps, compressors, agitators, pressure relief devices (PRDs), sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems), wastewater tanks, heat exchangers, and transfer racks.

The current NESHAP regulates process vessels based on the volume of the process vessel and the maximum true vapor pressure of the organic HAP processed or stored. Control requirements range from the use of tightly fitted lids on process vessels to the capture and reduction of organic HAP emissions through the use of add-on controls (*i.e.*, a flare, oxidizer, or condenser).

The NESHAP did not previously regulate inorganic HAP from process vessels. During the addition of raw materials in powder form to paint mixing vessels, emissions of inorganic HAP in the form of PM emissions may occur and are typically collected and routed to a PM control device (*i.e.*, baghouse, fabric filters, cartridge filters, or scrubbers). This final rule addresses the previously unaddressed inorganic HAP emissions from this category and requires MACT for emission sources of inorganic HAP.

*C. What changes did we propose for the MCM source category in our June 7, 2022, proposal?*

On June 7, 2022, the EPA published a proposal in the **Federal Register** for the MCM NESHAP, 40 CFR part 63, subpart HHHHH, to set a MACT standard for inorganic HAP metal emissions from process vessels in the MCM source category. We also proposed to add 1-bromopropane (1-BP) to table 7, *Partially Soluble HAP*, and table 11, *List of Hazardous Air Pollutants That Must Be Counted Toward Total Organic HAP Content If Present at 0.1 Percent or More by Mass*, to this subpart. We asked for comment on these changes, and additionally sought comment on the use of 1-BP in this source category.

## III. What is the rationale for our final decisions and amendments for the NESHAP for the MCM source category?

This section provides a description of what we proposed and what we are finalizing for the issue, the EPA's rationale for the final decisions and amendments, and a summary of key comments and responses.

<sup>3</sup> See 57 FR 31576; July 16, 1992.

<sup>4</sup> See EPA-450/3-91-030, July 1992, available at <https://nepis.epa.gov/Exe/ZyNET.exe/2000MTDN.TXT?ZyActionD=ZyDocument&Client=EPA&Index=1991+Thru+1994&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C91thru94%5Ctxt%5C00000015%5C2000MTDN.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=hpfr&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL>

<sup>1</sup> 85 FR 49724; Aug. 14, 2020.

<sup>2</sup> *Louisiana Environmental Action Network v. EPA*, 955 F.3d 1088 (D.C. Cir. 2020) (“LEAN”).

### A. Inorganic HAP Standards for Process Vessels

1. What comments did we receive on the inorganic HAP standards, and what are our responses?

*Comment:* We received comments that the EPA should include design evaluations of PM control devices (*i.e.*, baghouses, fabric filters, cartridge filters, or scrubbers) as alternatives to EPA Method 5 testing for initial compliance demonstrations. The commenters argued that coatings production often occurs infrequently, taking a fraction of the time needed to conduct an EPA Method 5 test. The commenters argued that EPA Method 5 test runs usually require an hour or more, whereas the addition of dry solids to an MCM subject process vessel usually takes no more than 10 or 15 minutes for each batch. The commenters stated that it could be a matter of days, or months, before another batch of dry solids is added to a process vessel. Further, commenters argued that typically only 1 or 2 batches in a year would be subject to these standards for several reasons, including that the amendments only apply to process vessels that are greater than or equal to 250 gallons, and that some of the manufactured materials might not be coatings. The commenters also stated that besides metal HAP, facilities might already route any PM to a control device resulting from the addition of dry solids (*i.e.*, for worker hygiene protection).

*Response:* Periodic performance tests verify control device performance and also help identify potential degradation of an add-on control device over time to ensure the control device remains effective, reducing the potential for acute emissions episodes or noncompliance. Therefore, we are finalizing the requirement to conduct performance testing. The commenters indicate that the most significant issue is related to the amount of time that the controls are operating to limit PM emissions. We recognize that there may be instances where inorganic HAP materials are processed for very limited periods of time and, therefore, are clarifying that the performance test may be conducted during any solids addition or processing steps, and not just during the addition of inorganic HAP-containing materials. We note that the PM emissions limit proposed for inorganic HAP was based on performance testing for similar units that had the potential for PM emissions, and not limited to periods where inorganic HAP-containing materials were added or processed. We are, therefore, clarifying the regulatory text

at 40 CFR 63.8005(i)(1)(i) to specify that EPA Method 5 may be conducted during the addition of any dry materials.

*Comment:* Commenters argued that design evaluations are allowed in other NESHAP rules including 40 CFR part 63, subpart BBBBBBB, Chemical Preparations Industry; 40 CFR part 63, subpart VVVVVV, Chemical Manufacturing Area Sources; and 40 CFR part 63, subpart CCCCCC, Paints and Allied Products Manufacturing, and therefore should be allowed in this standard. In addition, commenters argued that the current MCM rule references 40 CFR part 63, subpart SS, which they claimed allows design evaluations to control organic HAP.

*Response:* As discussed above, performance testing is important to verify initial and periodic control device performance. Although design evaluations have been allowed in some NESHAP such as the area source standards identified by the commenter, performance testing is required in a number of MACT standards to demonstrate compliance. In the August 14, 2020, final rule, we finalized requirements for facilities subject to subpart HHHHH to conduct control device performance testing no less frequently than once every 5 years when using emission capture systems and add-on controls to demonstrate compliance, see 85 FR 49724, 49729, and removed provisions in conflict with this change. However, we erroneously did not make a conforming change to 40 CFR 63.8005(d)(1) at that time to remove now obsolete language addressing the conduct of design evaluations. We are therefore making a correction to 40 CFR 63.8005(d)(1) to remove the remaining reference regarding design evaluations in this provision.

*Comment:* Commenters suggested that the EPA should clarify that 40 CFR part 63, subpart SS, does not apply to PM control devices by adding clarifying language to 40 CFR 63.8000(a)(2) and (c).

*Response:* Because the final inorganic HAP metal general requirements are specified in a separate section from the organic HAP requirements cited by this commenter, this commenter's suggested clarifications are unnecessary. The requirements in § 63.8000(a)(2) and (c) are not related to the metal HAP requirements for PM control devices. Therefore, we have not made the requested clarifications.

*Comment:* Commenters suggested that the EPA provide 3 years, rather than 1 year, to comply with the final rule amendments. Commenters argued that the EPA did not account for all facilities that will need to install new control

devices for PM. Commenters stated that some facilities have process vessels that are already controlled with a PM control device, but have other process vessels at their facilities that are not currently controlled with a PM control device and would, therefore, need to install a new PM control device.

*Response:* The final rule provides 1 year to comply with the amendments. For most facilities, 1 year to conduct performance tests on existing inorganic HAP control devices is an adequate amount of time. The commenters were not specific in terms of how many facilities would have to install new control devices to meet this final rule, but we expect that number to be minimal to none. Therefore, we have not provided additional time. We note, however, that 40 CFR 63.6(i)(4)(ii) provides an opportunity to request an additional 2 years to comply if necessary for the installation of controls.

*Comment:* One commenter suggested that the EPA conduct further research on the toxicity of non-mercury metal HAP.

*Response:* This comment is outside of the scope of this rulemaking. Nonetheless, the EPA continues to research and collect information on pollutants such as non-mercury metal HAP.

*Comment:* One commenter suggested that the EPA clarify whether inorganic HAP metal includes compounds of metal HAP (*i.e.*, manganese, antimony, nickel, lead, cobalt, chromium, cadmium, or arsenic) or just these metals themselves. The commenter also suggested that the EPA clarify whether the metal HAP limit of 0.1 percent by weight refers to the content of one single metal HAP compound or the total content of the metal HAP compounds combined.

*Response:* The definition of material containing metal HAP includes compounds of the metals listed and the metals themselves. The 0.1 percent by weight refers to the total content of all the metal HAP compounds combined and the metals themselves, except for elemental lead.

*Comment:* One commenter stated that there is a lack of standards for pigments and other solids that are in paste or slurry form. The commenter also suggested that the word "liquid" can be removed from the phrase "pigments and other solids that are in paste, slurry, or liquid form," as no PM emissions occur in liquids.

*Response:* We disagree that there need to be standards for pigments and other solids that are in paste or slurry form as PM emissions do not occur from processing liquids, pastes, or slurries.

2. What did we propose and what changes are being made to the inorganic HAP amendments in this final rule?

This final rule addresses the previously unregulated inorganic HAP metal emissions from this source category by setting MACT standards for emission sources of metal HAP by amending the compliance requirements in 40 CFR 63.7995(f); the general requirements specified in 40 CFR 63.8005(a)(1)(iii) and (i); the reporting requirements specified in 40 CFR 63.8075; the recordkeeping requirements in 40 CFR 63.8080(i) and (g); and the general provisions as specified in table 10 to this subpart, as proposed, to set PM standards stating that existing sources must demonstrate initial compliance with the PM emissions limit of 0.014 grains per dry standard cubic foot (gr/dscf) and new sources must demonstrate initial compliance with the PM emissions limit of 0.0079 gr/dscf. We are revising table 1 of 40 CFR part 63, subpart HHHHH, as proposed, to include the 0.014 gr/dscf emission limit that applies to process vessels. Facilities are required to continuously comply with the standards during all operations that emit metal HAP. These final amendments do not apply to pigments and other solids that are in paste, slurry, or liquid form.

We are finalizing, as proposed, the definitions in 40 CFR 63.8105 for Bag Leak Detection System (BLDS), fabric filter, and material containing metal HAP. We are also amending the regulatory text at 40 CFR 63.8005(i)(1)(i) to specify that EPA Method 5 may be conducted during the addition of any dry materials, not only when dry material containing metal HAP are added.

As finalized, continuous compliance with the emission limits will be demonstrated through control device parameter monitoring coupled with periodic emissions testing.

Under this final rule, a source owner is required to submit semi-annual compliance summary reports which document both compliance with the requirements of this rule and any deviations from compliance with any of those requirements.

#### B. Adding 1-BP to the List of HAP

1. What comments did we receive regarding the addition of 1-BP to our list of HAP, and what are our responses?

*Comment:* One commenter argued that the CAA requires the EPA to establish MACT standards for each uncontrolled HAP, including 1-BP. The commenter argued that the *LEAN* decision specifies that the EPA must set

emissions standards for each HAP emitted by the source category. The commenter stated that the *LEAN* decision requires the Agency to set MACT standards for HAP that have not previously been regulated. The commenter further stated that the EPA did not calculate MACT standards or establish emissions limits for 1-BP. The commenter stated that the EPA has never previously calculated how much 1-BP the best performing sources emit and has not set emissions standards for 1-BP. The commenter stated that adding 1-BP to table 7, *Partially Soluble HAP*, and table 11, *List of Hazardous Air Pollutants That Must Be Counted Toward Total Organic HAP Content If Present at 0.1 Percent or More by Mass*, to this subpart does not satisfy the EPA's obligation to set MACT standards. The commenter argued that the EPA does not have enough information to set a MACT floor for 1-BP. The commenter also argued that a similar analysis should have been completed for 1-BP as it was done for PM. The commenter argued that the EPA did not conduct a surrogate analysis between 1-BP and other organic HAP.

*Response:* As explained in our 2022 proposal, the D.C. Circuit in *LEAN* held that EPA has an obligation to address unregulated emissions from a source category when conducting the 8-year technology review required by section 112(d)(6). At the time this rule was proposed, we considered it possible that sources in this source category may use 1-BP; however, we had no data to support a conclusion that there are emissions of 1-BP from this source category. Nonetheless, we proposed to address potential MACT requirements, and stated "for this source category, we do not believe that the inclusion of 1-BP as an organic HAP would have affected the representativeness of the MACT standard." We asked for comments and data regarding emissions of 1-BP. However, no one provided data or other evidence demonstrating that 1-BP is emitted from this source category. In addition to requesting comments, we surveyed several MCM facilities to verify our position that 1-BP is not used in this industry. No respondents to our survey use or emit 1-BP (see *Miscellaneous Coating Manufacturing Source Category (MCM) Bromopropane (1-BP) Postcard Phone Survey Memo* in the docket for this action).

In response to this comment, we have examined whether the addition of 1-BP to the HAP list impacts the source category. We proposed to include 1-BP in the tables that list the regulated HAP for this source category as a conservative, protective approach.

However, our survey and our knowledge regarding likely sources of 1-BP emissions lead us to conclude that 1-BP is not used in this source category. Therefore, the obligation to address unregulated emissions set out in *LEAN* does not apply here, and we are not including 1-BP in the list of HAP regulated in this final rule. The EPA will continue to evaluate the best approach to address any new HAP additions for each source category as the applicable NESHAP is reviewed.

2. What did we propose and what changes are being made regarding the addition of 1-BP in this final rule?

On January 5, 2022, the EPA published in the **Federal Register** (87 FR 393) a final rule amending the list of HAP under the CAA to add 1-BP in response to public petitions previously granted by the EPA. This action became effective on February 4, 2022.

As discussed above, although we proposed to include 1-BP in the tables that list the regulated HAP for this source category, we determined that including 1-BP in the tables in this subpart is not the correct approach for this source category. Based on our brief phone survey and knowledge of the industry, we have determined that facilities are not using or emitting 1-BP in this source category. Therefore, we are not finalizing the addition of 1-BP to table 7, *Partially Soluble HAP*, and table 11, *List of Hazardous Air Pollutants That Must Be Counted Toward Total Organic HAP Content If Present at 0.1 Percent or More by Mass*, to this subpart to include 1-BP.

#### C. What are the effective and compliance dates of the standards?

The revisions to the MACT standards being promulgated in this action are effective on February 22, 2024.

All the provisions we are finalizing under CAA sections 112(d)(2) and (3) are subject to the compliance deadlines outlined under CAA section 112(i). For existing sources, CAA section 112(i)(3) provides there shall be compliance "as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard . . ." subject to certain exemptions further detailed in the statute.<sup>5</sup> In determining what compliance period is as "expeditiously as practicable," we examined the amount of time needed to plan and construct projects and change

<sup>5</sup> *Association of Battery Recyclers v. EPA*, 716 F.3d 667, 672 (D.C. Cir. 2013) ("Section 112(i)(3)'s 3-year maximum compliance period applies generally to any emission standard . . . promulgated under [section 112]" (brackets in original)).

operating procedures. As provided in CAA section 112(i), all new affected sources would comply with these provisions by the effective date of the final amendments to the MCM NESHAP or upon startup, whichever is later.

All affected facilities would have to continue to meet the current provisions of 40 CFR part 63, subpart HHHHH, until the applicable compliance date of the amended rule. This final action is not a “major rule” as defined by 5 U.S.C. 804(2), so the effective date of the final rule will be the promulgation date as specified in CAA section 112(d)(10).

For all affected sources that commence construction or reconstruction on or before June 7, 2022, we are finalizing, as proposed, that it is necessary to provide 1 year after the effective date of the final rule or upon startup, whichever is later, for owners and operators to comply with the PM provisions. For all affected sources that commenced construction or reconstruction after June 7, 2022, we are finalizing, as proposed, that owners and operators comply with the amended PM provisions by the effective date of the final rule or upon startup, whichever is later.

#### **IV. Summary of Cost, Environmental, and Economic Impacts and Additional Analyses Conducted**

##### *A. What are the affected sources?*

Currently, 42 major sources subject to the MCM NESHAP are operating in the United States. The affected source under the NESHAP is the facility-wide collection of equipment used to manufacture coatings and includes all process vessels; storage tanks for feedstocks and products; components such as pumps, compressors, agitators, PRDs, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; wastewater tanks; transfer racks; and cleaning operations. A coating is defined as a material such as paint, ink, or adhesive that is intended to be applied to a substrate and consists of a mixture of resins, pigments, solvents, and/or other additives, where the material is produced by a manufacturing operation and materials are blended, mixed, diluted, or otherwise formulated.

##### *B. What are the air quality impacts?*

We project no emissions reductions of PM from the MCM source category because all facilities reporting PM emissions are already equipped with particulate controls. This action finalizes first-time standards for

inorganic HAP that will limit emissions and require that controls are effective.

Indirect or secondary air emissions impacts are impacts that would result from the increased electricity usage associated with the operation of control devices (e.g., increased secondary emissions of criteria pollutants from power plants). Energy impacts consist of the electricity and steam needed to operate control devices and other equipment. The final amendments would have no effect on the energy needs of the affected facilities and would, therefore, have no indirect or secondary air emissions impacts.

##### *C. What are the cost impacts?*

All existing MCM facilities are expected to be currently achieving the level of control required by these final standards. That is, we believe that all existing sources currently route vent streams from specified equipment through a PM control device such that PM emissions are reduced to at least 0.014 gr/dscf. Although this final rule contains requirements for new sources, we are not aware of any new sources being constructed now or planned in the next year and, consequently, we did not estimate any cost impacts for new sources. Therefore, there are no capital costs of this final rule. The estimated annualized cost of the final rule would be \$205,000 per year. The annualized costs account for submitting the notifications and for control device performance testing, inspections, monitoring, recordkeeping, and reporting for 12 facilities that are expected to have add-on controls. As stated in the technical support document, *Update of Summary of Data Collected for the MCM RTR Amendments*, there are 12 facilities that reported metal HAP to the 2017 NEI. Therefore, we expect only 12 facilities to incur costs. This document is available in the docket for this action. No other capital costs are associated with this final rule, and no additional operational and maintenance costs are expected.

##### *D. What are the economic impacts?*

For the final rule, the EPA estimated the cost of performing an initial performance test and annual control device inspections at affected facilities. To assess the potential economic impacts, the expected annual cost is compared to the total sales revenue for the ultimate owners of affected facilities. For this rule, the expected annual cost is \$6,700 for each facility, with an estimated nationwide annual cost of \$205,000 (2019\$). The 42 affected facilities are owned by 27

parent companies, and the total costs associated with these amendments are expected to be less than 1 percent of annual sales revenue per ultimate owner. These costs account for 12 facilities expected to have add-on controls for metal HAP, as well as all 42 facilities to become familiar with the rule. These costs are not expected to result in a significant market impact, regardless of whether they are passed on to the purchaser or absorbed by the firms.

The EPA also prepared a small business screening assessment to determine whether any of the identified affected entities are small entities, as defined by the U.S. Small Business Administration. This analysis is available in the docket for this action (Docket ID No. EPA-HQ-OAR-2018-0747). Three of the affected facilities are owned by small entities. However, since the costs associated with these amendments for these 3 affected small entities are expected to be less than 1 percent of annual sales revenue per ultimate owner, there are no significant economic impacts on a substantial number of small entities from these final amendments.

Information on our cost impact estimates on the sources in the MCM source category is available in the docket for this final rule.

##### *E. What analysis of environmental justice did we conduct?*

Consistent with the EPA's commitment to integrating environmental justice (EJ) in the Agency's actions, and following the directives set forth in multiple Executive orders, the Agency has carefully determined the impacts of this action on communities with EJ concerns. For MCM facilities, the demographic proximity analysis shows the population for people of color is similar to or lower than the national average. However, the subcategory of the African American population is above the national average, as well as low-income and the population without a high-school diploma. This action will set emission standards for inorganic HAP metals. However, all existing sources currently operate control technologies and devices such that no further emission reductions are anticipated as a result of this action, including in communities already overburdened by pollution, which are often minority (i.e., people of color and/or indigenous peoples) and low-income. Following is a more detailed description of how the Agency considers EJ in the context of regulatory

development, and specific actions taken to address EJ concerns for this action.

Executive Order 12898 directs the EPA to identify the populations of concern who are most likely to experience unequal burdens from environmental harms, which are specifically minority populations (*i.e.*, people of color and/or indigenous people) and low-income populations (59 FR 7629; February 16, 1994). Additionally, Executive Order 13985 is intended to advance racial equity and support underserved communities through Federal Government actions (86 FR 7009; January 25, 2021). The EPA defines EJ as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.” In recognizing that minority and low-income populations often bear an unequal burden of environmental harms and risks, the EPA continues to determine ways of protecting them from adverse public health and environmental effects of air pollution.

To examine the potential for any EJ issues that might be associated with MCM facilities, we performed a demographic analysis, which is an assessment of individual demographic groups of the populations living within 5 kilometers (km) and 50 km of the facilities. The EPA then compared the data from this analysis to the national average for each of the demographic groups.

A summary of the proximity demographic assessment performed for the major source MCM facilities is included as Table 2 of the proposal (see 87 FR 34622). The results of the demographic analysis indicate that, for populations within 5 km of the 42 major source MCM facilities, the percent of the population who are people of color (being the total population minus the white population) is similar to the national average (41 percent versus 40 percent). However, the percent African American population is higher than the national percent (20 percent versus 12 percent nationally). The percent of people living below the poverty level (19 percent) and those over 25 without a high school diploma (15 percent) are higher than the national averages (13

percent and 12 percent, respectively). The results of the analysis of populations within 50 km of the 42 major source MCM facilities indicate that, the percent population of people of color (being the total population minus the white population) is significantly lower than the national average (28 percent versus 40 percent). The percent of people living below the poverty level, those over 25 without a high school diploma, and people living in linguistic isolation are also lower than the corresponding national averages. The methodology and the results of the demographic analysis are presented in a technical report, *Analysis of Demographic Factors for Populations Living Near MCM Facilities*, available in this docket for this action (Docket ID No. EPA-HQ-OAR-2018-0747).

With regard to HAP emissions, this action requires facilities with process vessels emitting inorganic HAP, which consist of PM emissions from addition of raw materials in powder form to paint mixing vessels, to demonstrate compliance with PM emissions of 0.014 gr/dscf for existing sources and 0.0079 gr/dscf for new sources. Because all existing sources control these emissions, no further emission reductions are anticipated as a result of this action, including in communities already overburdened by pollution, which are often minority (*i.e.*, people of color and/or indigenous peoples) and low-income.

## V. Statutory and Executive Order Reviews

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

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

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

### B. Paperwork Reduction Act (PRA)

The information collection activities in this final rule will be submitted for approval to OMB under the PRA. The ICR document that the EPA prepared has been assigned EPA ICR number 2115.10. You can find a copy of the ICR in the MCM Docket (Docket ID No. EPA-HQ-OAR-2018-0747), and it is briefly summarized here.

*Respondents/affected entities:* Facilities manufacturing surface coatings.

*Respondent's obligation to respond:* Mandatory (40 CFR part 63, subpart HHHHH).

*Estimated number of respondents:* In the year after the amendments are final, approximately 42 respondents per year would be subject to the NESHAP and no additional respondents are expected to become subject to the NESHAP during that period.

*Frequency of response:* The total number of responses in year 1 is 42, in year 2 is 12, and in year 3 is 12.

*Total estimated burden:* The average annual burden of the final amendments to the 42 MCM facilities over the first year if the amendments are finalized is estimated to be 1,593 hours (per year). The average annual burden to the Agency over the 3 years after the amendments are final is estimated to be 49 hours (per year). Burden is defined in 5 CFR 1320.3(b).

*Total estimated cost:* The average annual cost of the final amendments to the MCM facilities is \$178,000 in labor costs in the first 3 years after the amendments are final. The average annual capital and operation and maintenance costs are \$28,000. The total average annual Agency cost of the final amendments over the first 3 years after the amendments are final is estimated to be \$2,330.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this rule.

### C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are MCM facilities owned by small businesses. Three of the affected facilities are owned by small entities. However, since the costs associated with the amendments for these three affected small entities are expected to be less than one percent of annual sales revenue per ultimate owner, there are no significant economic impacts on a substantial number of small entities from these amendments. Details of this analysis are described in section IV.D. above and additional detail is provided

in the economic impact memorandums associated with this action.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. No tribal facilities are known to be engaged in any of the industries that would be affected by this action (MCM). Thus, Executive Order 13175 does not apply to this action. This action's health and risk assessments are contained in sections IV.E of this preamble.

Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA offered consultation to tribal officials during the development of this action. However, the Agency did not receive a request for consultation. The EPA also provided an overview on a tribal partnership call on June 30, 2022, during the public comment period to inform the tribes of the content of the proposed action and to encourage them to submit comments.

*G. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51*

This action involves technical standards. Therefore, the EPA conducted searches for the MCM NESHAP through the Enhanced National Standards Systems Network (NSSN) Database managed by the American National Standards Institute (ANSI). We also reviewed voluntary consensus standards (VCS) organizations and accessed and searched their databases for EPA Methods 5 and 29. During the EPA's VCS search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to the EPA's

referenced method, the EPA ordered a copy of the standard and reviewed it as a potential equivalent method. We reviewed all potential standards to determine the practicality of the VCS for this rule. This review requires significant method validation data that meet the requirements of EPA Method 301 for accepting alternative methods or scientific, engineering, and policy equivalence to procedures in the EPA referenced methods. The EPA may reconsider determinations of impracticability when additional information is available for a particular VCS.

No applicable VCS was identified for EPA Method 5. The search identified one VCS that was potentially applicable for this rule in lieu of EPA Method 29. However, after reviewing the available standard, the EPA determined that the VCS identified for measuring emissions of pollutants subject to emissions standards in the rule would not be practical due to lack of equivalency. Additional information for the VCS search and determination can be found in the memorandum *Voluntary Consensus Standard Results for National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coatings Manufacturing Technology Review*, which is available in the docket for this action.

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

Executive Order 12898 (59 FR 7629; February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make EJ part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or indigenous peoples) and low-income populations.

The EPA anticipates that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate effects on African American and low-income populations. Near MCM facilities, the percentages of residents who are African American or low income are higher than the nationwide percentages. However, based on prior analyses of this source category (85 FR 49727), risks from HAP pollutants have been found to be at acceptable levels and this rule will continue to maintain acceptable levels of exposure.

The EPA anticipates that this action will not change this characterization of impacts and is not likely to result in new disproportionate and adverse effects on people of color, low-income populations, and/or indigenous peoples. All existing sources currently operate control technologies and devices such that no further emission reductions are anticipated as a result of this action, including in communities already overburdened by pollution, which are often minority (*i.e.*, people of color and/or indigenous peoples) and low-income. The methodology and the results of the demographic analysis are available in the docket for this action (Docket ID No. EPA-HQ-OAR-2018-0747) in the technical report *Analysis of Demographic Factors for Populations Living Near MCM Facilities*.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because this action does not present any changes to the rule that would affect environmental health or safety risks, including those that would present a disproportionate risk to children.

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

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

*K. Congressional Review Act (CRA)*

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

**List of Subjects in 40 CFR Part 63**

Administrative practice and procedure, Air pollution control, Business and industry, Carbon oxides, Environmental protection, Hazardous substances, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Michael S. Regan,**  
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:



## PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

### Subpart HHHHH—National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing

■ 2. Amend § 63.7995 by revising paragraphs (a) introductory text and (b) and adding paragraph (f) to read as follows:

#### § 63.7995 When do I have to comply with this subpart?

\* \* \* \* \*

(a) Except as specified in paragraphs (e) and (f) of this section, if you have a new affected source, you must comply with this subpart according to the requirements in paragraphs (a)(1) and (2) of this section.

\* \* \* \* \*

(b) Except as specified in paragraphs (e) and (f) of this section, if you have an existing affected source on December 11, 2003, then you must comply with the requirements for existing sources in this subpart no later than December 11, 2006.

\* \* \* \* \*

(f) All affected sources that commenced construction or reconstruction on or before June 7, 2022, must be in compliance with the requirements listed in paragraphs (f)(1) through (4) of this section upon initial startup or February 22, 2024, whichever is later. All affected sources that commenced construction or reconstruction after June 7, 2022, must be in compliance with the requirements listed in paragraphs (f)(1) through (4) of this section upon initial startup, or February 22, 2023, whichever is later.

(1) The general requirements specified in § 63.8005(a)(1)(iii) and (i).

(2) The reporting requirements specified in § 63.8075.

(3) The recordkeeping requirements specified in § 63.8080(i) and (g).

(4) The general provisions as specified in table 10 to this subpart.

■ 3. Amend § 63.8000 by revising paragraph (d)(1) introductory text and adding paragraph (d)(1)(vii) to read as follows:

#### § 63.8000 What are my general requirements for complying with this subpart?

\* \* \* \* \*

(d) \* \* \*

(1) *Requirements for performance tests.* The requirements specified in paragraphs (d)(1)(i) through (vii) of this section apply instead of or in addition to the requirements for performance testing of control devices as specified in subpart SS of this part.

\* \* \* \* \*

(vii) You must conduct periodic performance tests and establish the operating limits required by § 63.8005(i) within 5 years following the previous performance test. You must conduct the initial or first periodic performance test before February 22, 2024, unless you are already required to complete a periodic performance test as a requirement of renewing your facility's operating permit under 40 CFR part 70 or 71, and have conducted a performance test on or before February 22, 2024. Thereafter you must conduct a performance test no later than 5 years following the previous performance test. Operating limits must be confirmed or reestablished during each performance test.

\* \* \* \* \*

■ 4. Amend § 63.8005 by:

■ a. Revising paragraphs (a)(1) introductory text and (a)(1)(i);

■ b. Adding paragraph (a)(1)(iii);

■ c. Revising paragraph (d)(1); and

■ d. Adding paragraph (i).

The revisions and additions read as follows:

#### § 63.8005 What requirements apply to my process vessels?

(a) \* \* \*

(1) You must meet each emission limit and work practice standard in table 1 to this subpart that applies to you, and you must meet each applicable requirement specified in § 63.8000(b), except as specified in paragraphs (a)(1)(i) through (iii) of this section.

(i) Except as provided in paragraph (a)(1)(iii) of this section, you are not required to meet the emission limits and work practice standards in table 1 to this subpart if you comply with § 63.8050 or § 63.8055.

\* \* \* \* \*

(iii) You must meet the inorganic HAP emissions limit in table 1 to this subpart during the addition of material containing metal HAP to a process vessel. You are not required to meet this limit for the addition of pigments and other solids that are in paste, slurry, or liquid form.

\* \* \* \* \*

(d) \* \* \*

(1) To demonstrate initial compliance with a percent reduction emission limit in table 1 to this subpart, you must conduct the performance test under conditions as specified in § 63.7(e)(1),

except as specified in paragraph (d)(5) of this section, and except that the performance test must be conducted under worst-case conditions. Also, the performance test for a control device used to control emissions from process vessels must be conducted according to § 63.1257(b)(8), including the submittal of a site-specific test plan for approval prior to testing. The requirements in § 63.997(e)(1)(i) and (iii) also do not apply for performance tests conducted to determine compliance with the emission limits for process vessels.

\* \* \* \* \*

(i) *Inorganic HAP standards.* You must demonstrate initial compliance with the inorganic HAP limit in table 1 to this subpart and as specified in paragraph (a)(1)(iii) of this section by following the requirements specified in paragraph (i)(1) or (2) of this section. You must demonstrate continuous compliance with the requirements in § 63.11583(a) through (e) and (h).

(1) You must follow the requirements specified in paragraphs (a)(1)(i) through (iii) of this section and include the results in your notification of compliance status report in accordance with § 63.8070.

(i) You must conduct the tests under conditions that represent normal operation, during which dry materials are added; tests may be conducted whether or not those dry materials contain metal HAP.

(ii) You must perform the test using EPA Method 5 in appendix A to 40 CFR part 60.

(iii) You must conduct a minimum of three separate test runs with a minimum sample volume of 70 dry standard cubic feet (2 dry standard cubic meters) per run for each performance test required in this section, as specified in § 63.7(e)(3).

(2) For existing sources only, you may demonstrate initial compliance using the results of an emissions test conducted in the past 5 years provided the test meets the requirements in paragraph (i)(1) of this section.

■ 5. Amend § 63.8075 by revising paragraph (d)(1) to read as follows:

#### § 63.8075 What reports must I submit and when?

\* \* \* \* \*

(d) \* \* \*

(1) You must submit the notification of compliance status report no later than 150 days after the applicable compliance date specified in § 63.7995. You must submit a separate notification of compliance status report after the applicable compliance date specified in § 63.7995(e) and (f).

\* \* \* \* \*



■ 6. Amend § 63.8080 by revising paragraph (g) and paragraph (i) introductory text to read as follows:

**§ 63.8080 What records must I keep?**

\* \* \* \* \*

(g) If you establish separate operating limits as allowed in § 63.8005(e) or (i), you must maintain a log of operation or a daily schedule indicating the time when you change from one operating limit to another.

\* \* \* \* \*

(i) On and after the compliance date specified in § 63.7995(e), for each deviation from an emission limitation reported under § 63.8075(e)(5) or § 63.8005(i), a record of the information specified in paragraphs (i)(1) and (2) of this section, as applicable.

\* \* \* \* \*

■ 7. Amend § 63.8105 in paragraph (g) by adding the definitions “Bag Leak Detection System”, “Fabric filter”, and “Material containing metal HAP”, in alphabetical order, to read as follows:

**§ 63.8105 What definitions apply to this subpart?**

\* \* \* \* \*

(g) \* \* \*

*Bag Leak Detection System (BLDS)* means a system that is capable of continuously monitoring particulate matter (dust) loadings in the exhaust of a baghouse in order to detect bag leaks and other upset conditions. A BLDS includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

\* \* \* \* \*

*Fabric filter* means an air collection and control system that utilizes a bag filter to reduce the emissions of metal HAP and other particulate matter.

\* \* \* \* \*

*Material containing metal HAP* means a material containing compounds of manganese, antimony, nickel, lead, cobalt, chromium, cadmium, and arsenic compounds, in amounts greater than or equal to 0.1 percent by weight as shown in formulation data provided by the manufacturer or supplier, such as the Material Safety Data Sheet for the material.

\* \* \* \* \*

■ 8. Table 1 to subpart HHHHH of part 63 is revised and republished to read as follows:

**TABLE 1 TO SUBPART HHHHH OF PART 63—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR PROCESS VESSELS**  
[As required in § 63.8005, you must meet each emission limit and work practice standard in the following table that applies to your process vessels.]

For each . . .	You must . . .	And you must . . .
1. Portable process vessel at an existing source.	a. Equip the vessel with a cover or lid that must be in place at all times when the vessel contains a HAP, except for material additions and sampling.	Nonapplicable.
2. Stationary process vessel at an existing source.	a. Equip the vessel with a cover or lid that must be in place at all times when the vessel contains a HAP, except for material additions and sampling; or b. Equip the vessel with a tightly fitting vented cover or lid that must be closed at all times when the vessel contains HAP, except for material additions and sampling. c. As specified in § 63.8005(i), on or before February 22, 2024, during the addition of dry material, route material containing metal HAP to a capture and control system that is maintained and operated according to the provisions of § 63.8005.	i. Considering both capture and any combination of control (except a flare), reduce emissions of organic HAP with a vapor existing pressure $\geq 0.6$ kPa by $\geq 75$ percent by weight, and reduce emissions of organic HAP with a vapor pressure $< 0.6$ kPa by $\geq 60$ percent by weight. ii. Reduce emissions of organic HAP with a vapor pressure $\geq 0.6$ kPa by $\geq 75$ percent by weight, and reduce emissions of organic HAP with a vapor pressure $< 0.6$ kPa by $\geq 60$ percent by weight, by venting emissions through a closed-vent system to any combination of control devices (except a flare); or iii. Reduce emissions of total organic HAP by venting emissions from a non-halogenated vent stream through a closed-vent system to a flare; or iv. Reduce emissions of total organic HAP by venting emissions through a closed-vent system to a condenser that reduces the outlet gas temperature to: $< 10$ °C if the process vessel contains HAP with a partial pressure $< 0.6$ kPa, or $< 2$ °C if the process vessel contains HAP with a partial pressure $\geq 0.6$ kPa and $< 17.2$ kPa, or $< -5$ °C if the process vessel contains HAP with a partial pressure $\geq 17.2$ kPa. v. Reduce emissions of material containing metal HAP to 0.014 gr/dscf or less.
3. Portable and stationary process vessel at a new source.	a. Equip the vessel with a tightly fitting vented cover or lid that must be closed at all times when the vessel contains HAP, except for material additions and sampling. b. As specified in § 63.8005(i), upon startup or February 22, 2023, whichever is later, during the addition of dry material, route material containing metal HAP to a capture and control system that is maintained and operated according to the provisions of § 63.8005.	i. Reduce emissions of total organic HAP by $\geq 95$ percent by weight by venting emissions through a closed-vent system to any combination of control devices (except a flare); or ii. Reduce emissions of total organic HAP by venting emissions from a non-halogenated vent stream through a closed-vent system to a flare; or iii. Reduce emissions of total organic HAP by venting emissions through a closed-vent system to a condenser that reduces the outlet gas temperature to: $< -4$ °C if the process vessel contains HAP with a partial pressure $< 0.7$ kPa, or $< -20$ °C if the process vessel contains HAP with a partial pressure $\geq 0.7$ kPa and $< 17.2$ kPa, or $< -30$ °C if the process vessel contains HAP with a partial pressure $\geq 17.2$ kPa. iv. Reduce emissions of material containing metal HAP to 0.0079 gr/dscf or less.

TABLE 1 TO SUBPART HHHHH OF PART 63—EMISSION LIMITS AND WORK PRACTICE STANDARDS FOR PROCESS VESSELS—Continued

[As required in § 63.8005, you must meet each emission limit and work practice standard in the following table that applies to your process vessels.]

For each . . .	You must . . .	And you must . . .
4. Halogenated vent stream from a process vessel subject to the requirements of item 2 or 3 of this table for which you use a combustion control device to control organic HAP emissions.	a. Use a halogen reduction device after the combustion control device; or b. Use a halogen reduction device before the combustion control device.	i. Reduce overall emissions of hydrogen halide and halogen HAP by $\geq 95$ percent; or ii. Reduce overall emissions of hydrogen halide and halogen HAP to $\leq 0.45$ kilogram per hour (kg/hr). Reduce the halogen atom mass emission rate to $\leq 0.45$ kg/hr.

[FR Doc. 2023–03562 Filed 2–21–23; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 122 and 123****[EPA–HQ–OW–2022–0834; FRL–10123–05–OW]****RIN 2040–AG27****NPDES Small MS4 Urbanized Area Clarification; Withdrawal of Direct Final Rule****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** Due to the receipt of an adverse comment, the Environmental Protection Agency (EPA) is withdrawing the direct final rule “NPDES Small MS4 Urbanized Area Clarification,” published on December 2, 2022.

**DATES:** Effective February 22, 2023, the EPA withdraws the direct final rule published at 87 FR 73965, on December 2, 2022.

**FOR FURTHER INFORMATION CONTACT:** Heather Huddle, Water Permits Division (MC4203), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20004; telephone number: (202) 564–7932; email address: [huddle.heather@epa.gov](mailto:huddle.heather@epa.gov).

**SUPPLEMENTARY INFORMATION:** On December 2, 2022, the EPA published a direct final rule (87 FR 73965). We stated in that direct final rule that if we received adverse comment by January 3, 2023 (extended to January 18, 2023 (87 FR 80079, December 29, 2022)), the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. Because the EPA subsequently received adverse comment on that direct final rule, we are withdrawing the direct final rule.

The EPA published a parallel proposed rule on the same day (87 FR 74066, December 2, 2022) as the direct

final rule, which proposed the same rule changes as the direct final rule. The proposed rule invited comment on the substance of these rule changes. The EPA will respond to comments as part of any final action it takes on the parallel proposed rule. As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

**List of Subjects****40 CFR Part 122**

Environmental protection, Stormwater, Water pollution.

**40 CFR Part 123**

Environmental protection, Stormwater, Water pollution.

**Michael S. Regan,**  
*Administrator.*

■ Accordingly, as of February 22, 2023, the EPA withdraws the direct final rule amending 40 CFR parts 122 and 123, which published at 87 FR 73965, on December 2, 2022.

[FR Doc. 2023–03590 Filed 2–21–23; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 300****[EPA–HQ–OLEM–2022–0319; EPA–HQ–OLEM–2022–0527; EPA–HQ–OLEM–2022–0579; FRL–10632–02–OLEM]****Deletion From the National Priorities List****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) announces the deletion of one site and the partial deletion of two sites from the Superfund National Priorities List (NPL). The NPL, created under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an

appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the states, through their designated state agencies, have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** The document is effective February 22, 2023.

**ADDRESSES:** *Docket:* EPA has established a docket for this action under the Docket Identification included in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document. All documents in the docket are listed on the <https://www.regulations.gov> website. The Final Close-Out Report (FCOR, for a full site deletion) or the Partial Deletion Justification (PDJ, for a partial site deletion) is the primary document which summarizes site information to support the deletion. It is typically written for a broad, non-technical audience and this document is included in the deletion docket for each of the sites in this rulemaking. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Docket materials are available through <https://www.regulations.gov> or at the corresponding Regional Records Centers. Locations, addresses, and phone numbers of the Regional Records Center follows.

- Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW, Mail code 9T25, Atlanta, GA 30303.
- Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Records Manager, Mail code SRC–7J, Metcalfe Federal Building, 7th Floor South, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.
- Region 6 (AR, LA, NM, OK, TX), US EPA Region 6 Records Center 1201 Elm

St., Suite 500, Dallas, TX 75270; 214/665-7544.

• EPA Headquarters Docket Center Reading Room (deletion dockets for all states), William Jefferson Clinton (WJC) West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004, (202) 566-1744.

EPA staff listed below in the **FOR FURTHER INFORMATION CONTACT** section may assist the public in answering inquiries about deleted sites and accessing deletion support documentation, determining whether there are additional physical deletion dockets available, or if COVID restrictions affect deletion docket access.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our federal partners so that we can respond rapidly as conditions change regarding COVID.

**FOR FURTHER INFORMATION CONTACT:**

- Leigh Lattimore, U.S. EPA Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), [lattimore.leigh@epa.gov](mailto:lattimore.leigh@epa.gov), 404/562-8768.
- Karen Cibulskis, U.S. EPA Region 5 (IL, IN, MI, MN, OH, WI), [cibulskis.karen@epa.gov](mailto:cibulskis.karen@epa.gov), 312/886-1843.
- Brian Mueller, U.S. EPA Region 6 (AR, LA, NM, OK, TX), [mueller.brian@epa.gov](mailto:mueller.brian@epa.gov), 214/665-7167.
- Charles Sands, U.S. EPA Headquarters, [sands.charles@epa.gov](mailto:sands.charles@epa.gov), 202-566-1142.

**SUPPLEMENTARY INFORMATION:** The NPL, created under section 105 of CERCLA, as amended, is an appendix of the NCP. The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. Partial deletion of sites is in accordance with 40 CFR 300.425(e) and are consistent with the Notice of Policy Change: Partial Deletion of Sites

Listed on the National Priorities List, 60 FR 55466, (November 1, 1995). The sites to be deleted are listed in Table 1, including docket information containing reference documents with the rationale and data principally relied upon by the EPA to determine that the Superfund response is complete. The NCP permits activities to occur at a deleted site, or that media or parcel of a partially deleted site, including operation and maintenance of the remedy, monitoring, and five-year reviews. These activities for the site are entered in Table 1 in this **SUPPLEMENTARY INFORMATION** section, if applicable, under Footnote such that; 1= site has continued operation and maintenance of the remedy, 2= site receives continued monitoring, and 3= site five-year reviews are conducted. As described in 40 CFR 300.425(e)(3) of the NCP, a site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

TABLE 1

Site name	City/county, state	Type	Docket No.	Footnote
U.S. Finishing/Cone Mills .....	Greenville, SC .....	Partial .....	EPA-HQ-OLEM-2022-0579.	1,2,3
Wauconda Sand & Gravel .....	Wauconda, IL .....	Partial .....	EPA-HQ-OLEM-2022-0319 .....	
River City Metal Finishing .....	San Antonio, TX .....	Full .....	EPA-HQ-OLEM-2022-0527.	

Information concerning the sites to be deleted and partially deleted from the NPL, the proposed rule for the deletion

and partial deletion of the sites, and information on receipt of public comment(s) and preparation of a

Responsiveness Summary (if applicable) are included in Table 2.

TABLE 2

Site name	Date, proposed rule	FR citation	Public comment	Responsiveness summary	Full site deletion (full) or media/parcels/description for partial deletion
U.S. Finishing/Cone Mills .....	8/17/2022	87 FR 50596 .....	No .....	No .....	70-acres of Operable Unit 1 Main Facility which includes soil, surface water, and sediment. Approximately 76-acres of soil. Full.
Wauconda Sand & Gravel .....	8/17/2022	87 FR 50596 .....	No .....	No .....	
River City Metal Finishing .....	8/17/2022	87 FR 50596 .....	Yes .....	Yes .....	

For the sites proposed for deletion, the closing date for comments in the proposed rule was September 16, 2022. The EPA received two public comments on the River City Metal Finishing site in this final rule. EPA placed the comments in the docket specified in Table 1, on <https://www.regulations.gov>, and in the appropriate Regional Records Center listed in the **ADDRESSES** section. One public comment was not germane to the proposed rulemaking. The second commentator believes CERCLA gives no guarantee that harm will not be done to public health again in the future at the site. The commenter believes if a site is no longer considered to be a hazard, it

should be noted that it was once classified as a priority and ranked lower overall on the NPL rather than deleted from the NPL. In response, no hazardous substances, pollutants, or contaminants remain at the Site above levels that preclude unlimited use and unrestricted exposure. This means that under the current and future residential, commercial, and industrial land use scenarios, the site poses no unacceptable risks to human health and the environment. Thus, EPA concluded that no action is warranted under CERCLA, and the site can be deleted from the NPL.

The deletion criteria for the Site have been met. A Responsiveness Summary was prepared and placed in the site deletion docket, EPA-HQ-OLEM-2022-0527 on <https://www.regulations.gov>, and in the appropriate Regional Records Centers listed in the **ADDRESSES** section.

For all other sites not specified above, no adverse comments were received.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the

NPL without application of the hazard ranking system. Deletion of a site from the NPL does not affect responsible party liability in the unlikely event that future conditions warrant further actions.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping

requirements, Superfund, Water pollution control, Water supply.

**Larry Douchand,**

*Office Director, Office of Superfund Remediation and Technology Innovation.*

For reasons set out in the preamble, the EPA amends 40 CFR part 300 as follows:

#### PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. In Appendix B to part 300 amend Table 1 by:

■ a. Revising the entry for “IL”, “Wauconda Sand & Gravel”, “Wauconda”;

■ b. Removing the entry for “TX”, “River City Metal Finishing”, “San Antonio”.

The revision reads as follows:

#### Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes (a)
IL	Wauconda Sand & Gravel	Wauconda	P

\* P = Sites with partial deletion(s).

[FR Doc. 2023–03147 Filed 2–21–23; 8:45 am]

BILLING CODE 6560–50–P

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 64

[CG Docket Nos. 03–123, 13–24, 22–408; FCC 22–97; FR ID 127353]

#### Order Denying Petition for Reconsideration of 2020 IP CTS Compensation Order

**AGENCY:** Federal Communications Commission.

**ACTION:** Denial of petitions for reconsideration.

**SUMMARY:** In this document, the Federal Communications Commission (FCC or Commission) denies petitions for reconsideration of several aspects of the Commission’s final rule setting compensation from the Telecommunications Relay Services (TRS) Fund for the provision of Internet Protocol Captioned Telephone Service (IP CTS). The document also denies a related request filed jointly by six IP CTS providers. In denying these petitions and requests, the Commission finds that they do not raise any new arguments or provide sufficient evidence that the Commission’s initial treatment of the issues in question was incorrect or incomplete. Additionally, the Commission finds that it fully considered the issues, based its decision

on the evidence in the record, and fully explained the rationale behind its decision.

**DATES:** This ruling is effective March 24, 2023.

#### FOR FURTHER INFORMATION CONTACT:

Michael Scott, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418–1264, or [Michael.Scott@fcc.gov](mailto:Michael.Scott@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Order on Reconsideration, document FCC 22–97, adopted on December 21, 2022, released on December 22, 2022, in CG Docket Nos. 03–123, 13–24, and 22–408. The full text of document FCC 22–97 is available for public inspection and copying via the Commission’s Electronic Comment Filing System. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

#### Synopsis

##### Background

1. Section 225 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 225, requires the Commission to ensure that TRS are available to persons who are deaf, hard of hearing, or DeafBlind or have speech disabilities, “to the extent possible and in the most efficient manner.” TRS are defined as “telephone transmission services” enabling such persons to communicate

by wire or radio “in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services.”

2. IP CTS, a form of TRS, permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an IP-enabled device via the Internet to simultaneously listen to the other party and read captions of what the other party is saying. IP CTS is supported entirely by the TRS Fund, which is composed of mandatory contributions collected from telecommunications carriers and voice over Internet Protocol (VoIP) service providers based on a percentage of each company’s annual revenue. IP CTS providers receive monthly payments from the TRS Fund to compensate them for the reasonable cost of providing the service, in accordance with a per-minute compensation formula approved by the Commission.

3. Before 2018, compensation for IP CTS providers was determined by proxy, by averaging the payments made by state TRS programs to providers of an analogous service, Captioned Telephone Service (CTS). In 2018, the Commission determined that this approach had resulted in providers receiving compensation greatly in excess of the average cost actually incurred to provide IP CTS. Instead, the Commission proposed that compensation be determined as a weighted average of the actual allowable

costs reported by the providers. The Commission also authorized, for the first time, the provision of IP CTS on a fully automatic basis, using *only* automatic speech recognition (ASR) technology to generate captions, without the participation of a communications assistant (CA).

4. In the *2020 IP CTS Compensation Order*, published at 85 FR 64971, October 14, 2020, the Commission adopted the average-cost methodology. To close the gap between compensation and average provider cost, while avoiding disruption to the provision of IP CTS from immediate application of the average cost methodology, the Commission implemented the resulting reductions in stages, by approximately 10% annually, until the compensation level reached the level of providers' average allowable costs (plus a 10% operating margin). As a result of these decisions, the compensation formula for IP CTS was reduced from \$1.9467 per minute in Fund Year 2017–18 to \$1.30 per minute in Fund Year 2021–22.

5. T-Mobile USA, Inc. (T-Mobile) and IDT Telecom, Inc. (IDT) filed petitions for reconsideration of the *2020 IP CTS Compensation Order*. T-Mobile requests reconsideration of the Commission's determination of provider compensation, arguing that the Commission did not have a reasoned basis for adopting a single compensation formula rather than a tiered structure and did not adequately consider certain costs. IDT, while not contesting the level of provider compensation, contends that the Commission should have reduced the applicable TRS Fund contribution factor to parallel the reduction in IP CTS compensation.

6. On May 25, 2021, six of the seven then-certified providers of IP CTS (the Joint Providers) filed a letter requesting that the Commission halt the reduction in IP CTS compensation from \$1.42 per minute to \$1.30 per minute scheduled for July 1, 2021. On July 1, 2021, the compensation adjustment to \$1.30 per minute became effective.

### Final Ruling

7. *T-Mobile Petition and Joint Providers Request to Freeze Compensation*. The Commission denies T-Mobile's petition for reconsideration of the Commission's decision in the *2020 IP CTS Compensation Order* to adopt an average-cost methodology for IP CTS and to set per-minute compensation levels of \$1.42 and \$1.30 for TRS Fund Years 2020–21 and 2021–22, respectively. For similar reasons, the Commission also denies the related request of six IP CTS providers (Joint Providers), in a May 2021 *ex parte*

letter, to reverse the \$1.30 formula previously set for 2021–22, and instead to freeze in place the \$1.42 formula adopted for the 2020–21 Fund Year, thereby continuing that higher compensation level for a second year.

8. The T-Mobile petition does not identify any reason warranting reconsideration. The Commission provided a reasoned explanation for both its decision to set a single compensation level based on average cost and its rejection of the tiered structure alternative advocated by some IP CTS providers. While T-Mobile claims that the Commission continued using its average cost methodology due to inertia and administrative convenience, the Commission cited numerous reasons for retaining the methodology, including that it relies on reasonably reliable and consistent cost data, which is subject to audit; provides substantial incentives and opportunities for individual TRS providers to increase their efficiency and capture the resulting profits; and provides a measure of transitional stability at a time of technological change. Although T-Mobile disputes whether providers could actually increase their efficiency, the Commission reasonably concluded that the record indicated such improvements were likely, especially with the introduction of fully automatic IP CTS.

9. T-Mobile argues that average cost compensation would force providers to degrade service “by moving to automatic speech recognition (ASR) technology before this newer technology achieves the same quality levels as current IP CTS offerings. However, the Commission found that, based on then-current testing, ASR-only IP CTS *already* could deliver captions far more quickly than IP CTS provided with communications assistants, and with comparable or greater accuracy. More recent testing buttresses that assessment.

10. T-Mobile also argues that the Commission inappropriately rejected a “superior alternative,” *i.e.*, adoption of a tiered compensation structure. T-Mobile points to nothing in the record to support its claim that a tiered structure would be “superior,” other than the fact that several providers believed so. In any event, the Commission fully addressed this question in the *2020 IP CTS Compensation Order*, providing a detailed explanation for its finding that tiered compensation levels are not appropriate for IP CTS. T-Mobile offered no arguments not previously considered as to why the Commission should have reached a different result.

11. Third, T-Mobile argues that the Commission failed to account for the expenses and uncertainty associated with the COVID–19 pandemic. To the contrary, the Commission made significant efforts to ensure that the impact of the pandemic was appropriately considered in the IP CTS compensation decision, including extending the expiration date of the compensation period and directing the TRS Fund administrator to request and collect additional cost and demand data for January to June 2020 from CA-assisted IP CTS providers to file an updated 2020 TRS Rate Report. Based on the additional data reported by the providers, the TRS Fund administrator found that increased expenditures during the pandemic had been offset by increased call volumes, resulting in no net increase in per-minute costs, as a group or even individually. In fact, per-minute costs were *lower* due to increased demand during the pandemic. Recognizing that the lower per-minute costs might not persist, the Commission set compensation in a conservative fashion, based on the *higher* pre-pandemic cost estimates.

12. T-Mobile argues that reliance on the TRS Fund administrator's report was misplaced because the report addressed only the initial months of the pandemic and did not reflect additional costs allegedly incurred later on. However, neither the rulemaking record nor T-Mobile's petition include any actual estimates of these allegedly unconsidered costs. Indeed, subsequent provider reports indicate substantial *declines* in per-minute costs for the period in question.

13. Finally, contrary to T-Mobile's contention, the Commission provided a reasonable explanation of its decision to continue setting a uniform compensation level for IP CTS, applicable to both the CA-assisted and ASR-only modes. As the Commission explained, absent sufficient information to assess the costs of the new ASR-only mode, it would have been arbitrary to attempt to devise a separate compensation formula for ASR-only IP CTS, and also would have run the risk of creating an inappropriate disincentive for adoption of this promising technology. In addition, the Commission reasonably relied on evidence that, to the extent that a single compensation formula encouraged IP CTS providers to increase their use of ASR-only captioning, the result would be an improvement in service quality.

14. The Commission also denies the request of the Joint Providers to maintain the IP CTS compensation level at \$1.42 per minute for the 2021–22 TRS

Fund year. The Joint Providers' request is essentially a late-filed petition for reconsideration of the *2020 IP CTS Compensation Order*, which established a lower compensation level, \$1.30 per minute, for that period. In any event, the Commission finds no merit in the Joint Providers' arguments. Like T-Mobile, the Joint Providers argue that a compensation freeze is needed to protect service quality and that the COVID-19 pandemic introduced cost uncertainties for IP CTS providers. However, as addressed above, the record established that the \$1.30 per minute rate afforded an opportunity for providers to recover their reasonable per-minute costs of providing IP CTS, plus a reasonable operating margin. In addition, the uncertainties introduced by the pandemic and its effect on provider costs were already considered, addressed, and factored into the compensation plan adopted in the *2020 IP CTS Compensation Order*. Accordingly, the Commission denies the petition of T-Mobile for reconsideration and the request of the Joint Providers for a freeze of the \$1.42 per minute compensation level.

15. *IDT Petition*. The Commission also denies IDT's petition for reconsideration

of the Commission's *2020 IP CTS Compensation Order*. IDT argues that, when the Commission adopted a mid-year reduction in the IP CTS compensation formula for the 2020–21 TRS Fund Year (reducing the compensation level from \$1.58 to \$1.42 per minute), the Commission also should have made a mid-year reduction in the applicable TRS Fund contribution factor. However, the Commission's rules already address such circumstances by detailing a process to address the collection of excess funding for a TRS Fund Year, by applying the excess against the funding requirement for the *following* year. In accordance with this rule, in June 2021 the Commission took account of the surplus in the TRS Fund when determining the contribution requirement and contribution factor for the 2021–22 TRS Fund Year. The lower contribution requirement for 2021–22 thus offset, for all TRS Fund contributors, the excess funding provided in the previous year. Because the contributors already received the benefit of the excess being applied to the funding requirement for the following year, no further action is warranted. Accordingly, the

Commission denies IDT's petition as moot.

#### Ordering Clauses

T-Mobile's Petition for Reconsideration of the compensation formulas adopted in the *2020 IP CTS Compensation Order* is *denied*.

The Joint Providers' request to freeze compensation at the \$1.42 compensation level is *denied*.

IDT's Petition for Reconsideration of the contribution requirements adopted in the *2020 IP CTS Compensation Order* is *denied as moot*.

#### Congressional Review Act

The Commission will not send a copy of the *Order on Reconsideration* to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), *see* 5 U.S.C. 801(a)(1)(A), because it does not adopt any rule as defined in the Congressional Review Act, 5 U.S.C. 804(3).

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer.*

[FR Doc. 2023–03553 Filed 2–21–23; 8:45 am]

**BILLING CODE 6712–01–P**

# Proposed Rules

Federal Register

Vol. 88, No. 35

Wednesday, February 22, 2023

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF ENERGY

### 10 CFR Part 430

[EERE-2019-BT-STD-0018]

RIN 1904-AE12

### Energy Conservation Program: Energy Conservation Standards for Distribution Transformers; Extension of Public Comment Period

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of proposed rulemaking; extension of public comment period.

**SUMMARY:** On January 11, 2023, the U.S. Department of Energy (“DOE”) published a notice of proposed rulemaking and announcement of public meeting (“NOPR”) proposing amended energy conservation standards for distribution transformers, and also to announce a public meeting to receive comment on the proposed standards and associated analyses and results. The notice provided an opportunity for submitting written comments, data, and information by March 13, 2023. DOE received a request from Cleveland-Cliffs, Inc.; a joint request from the American Public Power Association (APPA), Edison Electric Institute (EEL) and the National Rural Electric Cooperative Association (NRECA); and a request from the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW) to extend the written comment period. DOE has reviewed these requests and is granting an extension of the comment period for 14 days to allow public comments to be submitted until March 27, 2023.

**DATES:** The comment period for the NOPR published on January 11, 2023 (88 FR 1722) is extended. DOE will accept comments, data, and information regarding this NOPR received no later than March 27, 2023.

**ADDRESSES:** Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at

[www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE-2019-BT-STD-0018, by any of the following methods:

**Email:** [DistributionTransformers2019STD0018@ee.doe.gov](mailto:DistributionTransformers2019STD0018@ee.doe.gov). Include the docket number EERE-2019-BT-STD-0018 in the subject line of the message.

**Postal Mail:** Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, Mailstop EE-5B, 1000 Independence Avenue SW, Washington, DC 20585-0121.

Telephone: (202) 287-1445. If possible, please submit all items on a compact disc (“CD”), in which case it is not necessary to include printed copies.

**Hand Delivery/Courier:** Appliance and Equipment Standards Program, U.S. Department of Energy, Building Technologies Office, 950 L’Enfant Plaza SW, 6th Floor, Washington, DC 20024. Telephone: (202) 287-1445. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles (“faxes”) will be accepted.

**Docket:** The docket for this activity, which includes **Federal Register** notices, comments, and other supporting documents/materials, is available for review at [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

The docket web page can be found at [www.regulations.gov/docket/EERE-2019-BT-STD-0018](http://www.regulations.gov/docket/EERE-2019-BT-STD-0018). The docket web page contains instructions on how to access all documents, including public comments, in the docket.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Domm, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE-2J, 1000 Independence Avenue SW, Washington, DC 20585-0121. Telephone: (202) 586-9870. Email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

Mr. Matthew Ring, U.S. Department of Energy, Office of the General Counsel, GC-33, 1000 Independence Avenue SW, Washington, DC 20585-0121.

Telephone: (202) 586-2555. Email: [matthew.ring@hq.doe.gov](mailto:matthew.ring@hq.doe.gov).

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287-1445 or by email: [ApplianceStandardsQuestions@ee.doe.gov](mailto:ApplianceStandardsQuestions@ee.doe.gov).

**SUPPLEMENTARY INFORMATION:** On January 11, 2023, DOE published a notice of proposed rulemaking (“NOPR”) proposing amended energy conservation standards for distribution transformers, and also announced a public meeting to receive comment on these proposed standards and associated analyses and results. The notice provided an opportunity for submitting written comments, data, and information by March 13, 2023. 88 FR 1722. On January 12, 2023, Cleveland-Cliffs Inc. (“Cleveland Cliffs”), requested that DOE extend the deadline for the comment period on the NOPR by a minimum of 30 days. Cleveland Cliffs stated the proposal requires detailed technical and economic analysis by every facet of the transformer supply chain. (Cleveland Cliffs, No. 66 at p. 1). On January 30, 2023, the American Public Power Association (APPA), Edison Electric Institute (EEL), and the National Rural Electric Cooperative Association (NRECA) jointly requested an extension of the comment period extension for 60 additional days stating that an extension will provide valuable time for all parties to contemplate, consider, research, and meaningfully respond to the important issues implicated by the proposed rule. (APPA, EEL, and NRECA, No. 67 at p. 2). On February 12, 2023, the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW) requested an extension of the comment period for at least another 30 days. UAW stated that they are working to understand the full extent of the impact of the proposed standards on both their members and the communities that rely on electric power. (UAW, No. 68 at p. 1).

DOE has reviewed these requests and is extending the comment period by 14 days to allow additional time for interested parties to submit comments. DOE notes the complexities of the current distribution transformer market, including the intersection with steel

manufacturing and diversification as well as labor concerns. DOE believes these complexities provide unique grounds that warrant additional time, which will allow for meaningful input on DOE's proposed energy conservation standards for distribution transformers from all stakeholders. DOE believes 14 days is sufficient for these purposes. Therefore, DOE is extending the comment period until March 27, 2023.

#### Signing Authority

This document of the Department of Energy was signed on February 14, 2023, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on February 15, 2023.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S.  
Department of Energy.*

[FR Doc. 2023-03547 Filed 2-21-23; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF EDUCATION

### 34 CFR Parts 75 and 76

[Docket ID ED-2022-OPE-0157]

RIN 1840-AD72

#### Direct Grant Programs, State-Administered Formula Grant Programs

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Department of Education (we or the Department) proposes to rescind regulations related to religious student organizations at certain public institutions of higher education (IHEs) that prescribe a novel role for the Department in enforcing grant conditions related to religious student organizations. These regulations apply to public IHEs that receive a direct grant from the Department or a subgrant from a State-administered formula grant program of the

Department. The Department proposes to rescind the regulations because they are not necessary to protect the First Amendment right to free speech and free exercise of religion; have created confusion among institutions; and prescribe an unduly burdensome role for the Department to investigate allegations regarding IHEs' treatment of religious student organizations.

**DATES:** We must receive your comments on or before March 24, 2023.

**ADDRESSES:** Comments must be submitted via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). However, if you require an accommodation or cannot otherwise submit your comments via [www.regulations.gov](http://www.regulations.gov), please contact the contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "FAQ".

*Privacy Note:* The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information about themselves that they wish to make publicly available. Commenters should not include in their comments any information that identifies other individuals or that permits readers to identify other individuals. If, for example, your comment describes an experience of someone other than yourself, please do not identify that individual or include information that would allow readers to identify that individual. The Department will not make comments that contain personally identifiable information (PII) about someone other than the commenter publicly available on [www.regulations.gov](http://www.regulations.gov) for privacy reasons. This may include comments where the commenter refers to a third-party individual without using their name if the Department determines that the comment provides enough detail that could allow one or more readers to

link the information to the third party. If your comment refers to a third-party individual, to help ensure that your comment is posted, please consider submitting your comment anonymously to reduce the chance that information in your comment about a third party could be linked to the third party. The Department will also not make comments that contain threats of harm to another person or to oneself available on [www.regulations.gov](http://www.regulations.gov).

#### FOR FURTHER INFORMATION CONTACT:

Ashley Clark, U.S. Department of Education, 400 Maryland Avenue SW, Room 2C185, Washington, DC 20202. Telephone: (202) 453-7977. Email: [ashley.clark@ed.gov](mailto:ashley.clark@ed.gov).

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

*Invitation to Comment:* We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to clearly identify the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we can reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities. Please also feel free to offer for our consideration any alternative approaches to the subjects addressed by the proposed regulations.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing *Regulations.gov*.

*Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record:* On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### SUPPLEMENTARY INFORMATION:



## Background

### 2020 Regulatory Action

Executive Order (E.O.) 13864, Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities,<sup>1</sup> issued on March 21, 2019, requires relevant agencies to take appropriate steps to ensure that institutions of higher education that receive Federal research or education grants promote free inquiry (described in the E.O. as fostering “environments that promote open, intellectually engaging, and diverse debate”), including through compliance with applicable Federal laws and regulations. E.O. 13864 further provides that the terms “Federal research or education grants” do not, for purposes of the order, include funding associated with Federal student aid programs that cover tuition, fees, or stipends.

The Department published a notice of proposed rulemaking (NPRM) on January 17, 2020 (2020 NPRM).<sup>2</sup> In the 2020 NPRM, the Department relied upon the United States Supreme Court’s 2017 decision in *Trinity Lutheran Church of Columbia, Inc. v. Comer*,<sup>3</sup> the United States Attorney General’s October 6, 2017, memorandum on Federal Law Protections for Religious Liberty,<sup>4</sup> E.O. 13798, “Promoting Free Speech and Religious Liberty,” dated May 4, 2017,<sup>5</sup> and E.O. 13831, “Establishment of a White House Faith and Opportunity Initiative,” dated May 3, 2018.<sup>6</sup> The 2020 NPRM proposed, among other things, to add material conditions relating to First Amendment freedoms, including the freedom of speech and free exercise of religion, to Department grants. Specifically, the 2020 NPRM proposed to impose a grant condition on grantees to comply with the First Amendment to the U.S. Constitution, in the case of public IHEs, or stated institutional policies regarding freedom of speech, in the case of private IHEs. The 2020 NPRM explained that, if there is a final, non-default judgment that an IHE had violated the First Amendment or such institutional policies, the Department would consider that grantee to be in violation of a material condition of the grant and may pursue available remedies for

noncompliance.<sup>7</sup> Finally, it proposed to add a material grant condition prohibiting public IHEs from denying to a religious student organization at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the institution because of the religious student organization’s beliefs, practices, policies, speech, membership standards, or leadership standards of the religious student organization. However, the 2020 NPRM did not describe how the Department would determine if an IHE is out of compliance with this particular condition.

On September 23, 2020, the Department published the final rule, which became effective on November 23, 2020 (2020 final rule).<sup>8</sup> As proposed in the 2020 NPRM, the 2020 final rule added provisions related to free inquiry (§ 75.500(b) and (c) for Direct Grant Programs, and § 76.500(b) and (c) for State-Administered Formula Grant Programs), making it a material condition of these Department grants that public IHEs receiving these grants comply with the First Amendment and private institutions receiving these grants follow their stated institutional policies on freedom of speech, including academic freedom. Furthermore, the 2020 final rule added a third condition (§ 75.500(d) for Direct Grant Programs and § 76.500(d) for State-Administered Formula Grant Programs) prohibiting public IHEs from denying to any student organization whose stated mission is religious in nature at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the institution because of the religious student organization’s beliefs, practices, policies, speech, membership standards, or leadership standards informed by sincerely-held religious beliefs.<sup>9</sup>

<sup>7</sup> 85 FR 3196.

<sup>8</sup> See 85 FR 59916. The Department also published a document with two technical corrections on November 6, 2020, see 85 FR 70975.

<sup>9</sup> In the final rule, the Department revised the language in §§ 75.500(d) and 76.500(d) to clarify that religious student organizations include any student organization whose stated mission is religious in nature and that the public institution cannot deny any right, benefit, or privilege that is otherwise afforded to other student organizations because of the religious student organization’s beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs: “As a material condition of the Department’s grant, each grantee that is a public institution shall not deny to any student organization whose stated mission is religious in nature and that is at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution (including but not limited to full access to the facilities of the public institution,

The 2020 final rule states that an IHE will be determined to have violated the grant conditions in §§ 75.500(b) and (c) and 76.500(b) and (c) only if a State or Federal court issues a final, non-default judgment against a public IHE for violating the First Amendment or against a private IHE for violating stated institutional policies. In the 2020 NPRM and 2020 final rule, the Department stated that such judgments would be a necessary precondition of enforcing the grant conditions because State and Federal courts are the appropriate arbiters of alleged free speech violations.<sup>10</sup> The 2020 final rule further stated, “State and Federal courts have a well-developed body of case law concerning First Amendment freedoms as well as breach of contract cases or other claims that may be brought with respect to stated institutional policies.”<sup>11</sup>

Under the 2020 final rule concerning these conditions, the Department’s role is deciding whether and to what extent to impose additional penalties where such court judgments have been rendered, including, but not limited to, withholding Federal grant funding.<sup>12</sup> The preamble to the 2020 final rule stated that if a court issues such a judgment against a public IHE for violating the First Amendment or a private IHE for violating stated institutional policies, the institution must submit to the Secretary a copy of the judgment within 45 days, and the Department may pursue remedies to address noncompliance with a grant condition.

Unlike with §§ 75.500(b) and (c) and 76.500(b) and (c), action by the Department on §§ 75.500(d) and 76.500(d) is not tied to a court judgment. When responding to public comments in the 2020 final rule, the Department concluded that “[w]hether religious student organizations are denied the rights, benefits, and privileges as other student organizations is a discrete issue that the Department may easily investigate.”<sup>13</sup> The 2020 final rule did not provide any further information as to the procedures the Department would use to investigate this grant condition. On November 25, 2020, the Department published a

distribution of student fee funds, and official recognition of the student organization by the public institution) because of the religious student organization’s beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely held religious beliefs.”

<sup>10</sup> 85 FR 3213 and 85 FR 59921.

<sup>11</sup> 85 FR 59921.

<sup>12</sup> Id.

<sup>13</sup> 85 FR 59944–45.

<sup>1</sup> 84 FR 11401.

<sup>2</sup> 85 FR 3190.

<sup>3</sup> 137 S. Ct. 2012 (2017).

<sup>4</sup> Office of the Attorney General. “Memorandum for All Executive Departments and Agencies”. Department of Justice, October 6, 2017: <https://www.justice.gov/opa/press-release/file/1001891/download>.

<sup>5</sup> 82 FR 21675.

<sup>6</sup> 83 FR 20715. This E.O. was revoked on February 14, 2021, by 86 FR 10007.

separate Notice of Reporting Process to provide additional information on §§ 75.500(d) and 76.500(d).<sup>14</sup> In that notice, the Department provided an email address for anyone to report alleged violations of this grant condition to the Department.

In the 2020 NPRM, the Department's stated goals for promulgating the regulations included ensuring that institutions that receive Federal funds from the Department promote free inquiry, free expression, and academic freedom, and protecting free speech on college campuses.<sup>15</sup> The Department stated that the proposed regulations would apply to all such institutions because the denial of free inquiry is harmful at all institutions.<sup>16</sup> The Department reiterated these goals and views in promulgating the 2020 final rule.<sup>17</sup> The Department further stated that, in regard to religious student organizations, the final regulations help ensure that religious organizations as well as their student members fully retain their right to free exercise of religion.

#### *Review of the 2020 Regulations*

On August 19, 2021, the Department issued a blog post announcing that we were conducting a review of these regulations while keeping in mind the importance of several key elements, including First Amendment protections, nondiscrimination requirements, and the promotion of inclusive learning environments for all students.<sup>18</sup> We stated in our blog post that the First Amendment requires that public colleges and universities not infringe upon students' rights to engage in protected free speech and religious exercise and emphasized our long-held and continuing view that "[p]rotecting First Amendment freedoms on public university and college campuses is essential." We also emphasized that public colleges and universities generally may not deny student organizations access to school-sponsored forums because of the groups' religious or nonreligious viewpoints and recognized that IHEs receiving Federal financial assistance must comply with applicable Federal statutes and regulations that prohibit discrimination. The Department further recognized that IHEs, their students, and the courts have

historically been responsible for resolving disputes relating to these complex matters where these important principles intersect.

As part of the review, the Department conducted outreach and held meetings with: (1) higher education and institutional stakeholders, including organizations representing public institutions; (2) faith-based organizations, including organizations representing religious IHEs; and (3) organizations that advocate for civil rights and civil liberties. The purpose of the meetings was to hear from impacted groups that had diverging perspectives in their comments on the proposed provisions in the 2020 NPRM. Institutional stakeholders raised concerns that, under §§ 75.500(d) and 76.500(d), the Department's contemplated role would undermine individual institutions' ability to tailor their policies to best meet the needs of their student populations and campuses within existing legal constraints. They believe that the appropriate level of decision-making should remain at the institutional level, with the entities best positioned to ensure respect for religious expression and exercise and protection against unlawful discrimination for students on campuses. Some faith-based and civil rights organizations raised concerns that §§ 75.500(d) and 76.500(d) create confusion about the interplay between these regulations and other nondiscrimination requirements. In particular, those organizations worried that §§ 75.500(d) and 76.500(d) could be interpreted to require IHEs to go beyond what the First Amendment mandates and allow religious student groups to discriminate against vulnerable and marginalized students. The Department also heard from representatives of other faith-based organizations that believe that the regulations fairly state current law, provide needed protections for students of all faiths, and ensure religious students feel welcome on public college campuses.

Having reconsidered the regulations after hearing from stakeholders, including reconsidering the potential confusion among institutions and burdensome role for the Department, we propose to rescind the provisions added by the 2020 final rule to §§ 75.500(d) and 76.500(d).

We also heard concerns from stakeholders about §§ 75.500(b) and (c) and 76.500(b) and (c). To date, the Department has not received notice of any final non-default judgments that might trigger those provisions, nor has it received evidence regarding the intended impact of these components.

For those reasons, we are not proposing to modify those paragraphs in this rulemaking, but we are publishing a separate request for information to further inform our review of these components and our implementation of applicable grant programs.

We discuss substantive issues below. We have grouped our discussion of §§ 75.500(d) and 76.500(d) together because we are proposing the same changes to the grant conditions of Direct Grant Programs (Part 75) and State-Administered Grant Programs (Part 76). Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.<sup>19</sup>

#### *§§ 75.500(d) and 76.500(d) Public Institutions and Religious Student Organizations*

*Statute:* The General Education Provisions Act (GEPA) provides general authority to the Secretary to "make, promulgate, issue, rescind, and amend rules and regulations" governing applicable programs run by the Department.<sup>20</sup>

*Current Regulations:* Section 75.500(d) requires, as a material condition of receiving a grant, that public IHEs that are grantees of a direct grant program not deny any religious student organization any right, benefit, or privilege that is otherwise afforded to other student organizations because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely-held religious beliefs. Likewise, section 76.500(d) requires, as a material condition of receiving a grant, that a State or public institution that is a subgrantee not deny to any religious student organization any right, benefit, or privilege that is afforded to other student organizations because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely-held religious beliefs. To enforce these portions of the rule, the Department created an email address that anyone may use to report alleged violations of this provision.<sup>21</sup>

*Proposed Regulations:* The Department proposes to rescind §§ 75.500(d) and 76.500(d).

<sup>14</sup> Notice of Reporting Process, 85 FR 75311 (November 25, 2020).

<sup>15</sup> 85 FR 3196.

<sup>16</sup> Id.

<sup>17</sup> 85 FR 59924.

<sup>18</sup> Cooper, Michelle Asha. "Update on the Free Inquiry Rule," Department of Education Homeroom Blog (Aug. 19, 2021), <https://blog.ed.gov/2021/08/update-on-the-free-inquiry-rule/>.

<sup>19</sup> We do not propose to change any provisions from the 2020 final rule not discussed below. Additionally, we do not propose to change any regulations issued as part of the Dec 17, 2020, joint rulemaking (85 FR 82037).

<sup>20</sup> 20 U.S.C. 1221e-3.

<sup>21</sup> See Notice of Reporting Process, 85 FR 75311 (November 25, 2020).

*Reasons:* The Department deeply values religious liberty and free expression. Public IHEs are rightly required to comply with First Amendment guarantees, including the free exercise of religion. Rescinding these regulations would not affect those requirements.<sup>22</sup>

The purported function of §§ 75.500(d) and 76.500(d) is to help ensure that public educational institutions do not *discriminate against* religious organizations in a way the Constitution forbids. As the Department explained in the preamble to the 2020 final rule, those provisions were promulgated in order to “reinforce the First Amendment’s mandate that public institutions treat religious student organizations the same as other student organizations” (emphasis added).<sup>23</sup> The preamble to the 2020 final rule further states that the Free Exercise Clause “‘protect[s] religious observers against unequal treatment’ and subjects laws that target the religious for ‘special disabilities’ based on their ‘religious status’” to the strictest scrutiny (emphasis added).<sup>24</sup> Accordingly, Sections 75.500(d) and 76.500(d), we explained, “are designed to bolster these protections and prevent public institutions from denying rights, benefits, and privileges to religious student organizations *because of their religious character*”<sup>25</sup> (emphasis added). “Ultimately, §§ 75.500(d) and 76.500(d) clarify that public institutions allowing student organizations to restrict membership or hold certain standards for leadership may not implement non-neutral policies that single out religious student organizations for unfavorable treatment.”<sup>26</sup>

In response to the 2020 NPRM, several commenters raised concerns that, despite this nondiscrimination objective, the regulations themselves could be read to require IHEs to afford preferential treatment to religious

student groups and would prohibit IHEs from applying neutral, generally-applicable nondiscrimination policies that would otherwise be compliant with the First Amendment. Throughout the preamble and in response to those comments, the Department repeatedly asserted that §§ 75.500(d) and 76.500(d) do not afford any *preferences* to religious organizations.<sup>27</sup> The Department explained that the imposition of this grant condition was meant to be consistent with the First Amendment because the regulations “do not prohibit public colleges and universities from implementing all-comers policies, nor do they bar these institutions from applying neutral, generally-applicable policies to religious student organizations.”<sup>28</sup> The preamble provided examples of what the Department considered to be “true” or “authentic” all-comers policies, while acknowledging that such policies are permitted but not required by the Constitution.<sup>29</sup> In the preamble, the Department similarly asserted that public IHEs may apply neutral,

generally-applicable policies to religious student organizations in a nondiscriminatory manner without risking any disqualification for the covered Department grants.<sup>30</sup>

However, the regulatory language the Department adopted in §§ 75.500(d) and 76.500(d) does not expressly reflect that the material condition required by those sections is merely a *nondiscrimination* requirement, nor does it specify that IHEs may apply neutral and generally-applicable rules to religious student organizations. To the contrary, the regulations state that, as a material condition of a covered Department grant, a public institution shall not deny any right, benefit, or privilege that is otherwise afforded to other student organizations at the public institution “to any student organization whose stated mission is religious in nature” not only on the basis of the organization’s status, beliefs and speech, but also “because of . . . [its] practices, policies . . . membership standards, or leadership standards, which are informed by sincerely-held religious beliefs.” There is nothing in the regulatory text that clarifies or guarantees that an institution may insist that such religious organizations comply with the same neutral and generally-applicable practices, policies, and membership and leadership standards that apply equally to nonreligious student organizations, including but not limited to nondiscrimination requirements.

The disparity between the language of the regulatory text and the Department’s stated intent has engendered confusion and uncertainty about what institutions must do to avoid risking ineligibility for covered Department grants. As part of our review described in the August 2021 blog post, the Department conducted outreach and listening sessions with institutional stakeholders and representatives of faith-based communities. Many of those stakeholders voiced confusion about the

<sup>22</sup> See, e.g., *Healy v. James*, 408 U.S. 169, 180 (1972) (noting that “state colleges and universities are not enclaves immune from the sweep of the First Amendment”); *Rosenberger v. Rector and Visitors of the University of Virginia*, 515 U.S. 819, 822 (1995) (noting that the University is an instrumentality of the Commonwealth and “thus bound by the First and Fourteenth Amendments”).

<sup>23</sup> 85 FR 59942; and see also *id.* at 59943 (“these regulations are necessary to make the guarantees in the First Amendment, including the Free Exercise Clause, a reality at public institutions”); *id.* at 59944 (“§§ 75.500(d) and 76.500(d) . . . are rooted in the First Amendment [and] do not apply to private institutions because private institutions are not bound by the First Amendment”).

<sup>24</sup> *Id.* at 59942 (quoting *Trinity Lutheran*, 137 S. Ct. at 2019).

<sup>25</sup> *Id.* at 59943. See also *id.* at 59940.

<sup>26</sup> *Id.* at 59939.

<sup>27</sup> See, e.g., *id.* at 59938 (“the rule mandates equal treatment for religious student organizations as compared to their secular counterparts; these final regulations do not favor or disfavor religious student organizations or any particular religion”); *id.* at 59939 (“The final regulations would not, as one commenter suggested, mandate preferential treatment for religious student organizations . . . . Here, the Department requires parity among all organizations . . . . A public institution . . . may adopt . . . generally-applicable policies with respect to student organizations as long as such policies apply equally to all student organizations, including religious student organizations. None of these scenarios give religious student organizations an exemption or preferential treatment, but merely equal treatment, which is required under the First Amendment.”); *id.* at 59940 (“The Department reiterates that the final regulations do not mandate preferential treatment for faith-based student organizations; instead, the regulatory text requires that religious student organizations not be denied benefits given to any other student group because of their religious nature. Therefore, rather than giving religious student organizations special treatment, the regulation explicitly requires the opposite outcome—that religious student organizations at public institutions be afforded equal treatment.”).

<sup>28</sup> 85 FR 59939. See also *id.* at 59940 (“withholding funds from any student organization under a neutral rule of general applicability is not constitutionally suspect or prohibited under these final regulations”).

<sup>29</sup> The preamble to the 2020 final rule stated that a “true all-comers policy” or “authentic all-comers policy” is limited to one that “applies equally to all student organizations and which requires all student organizations to allow any student to participate, become a member, or seek leadership positions in the organization, regardless of the student’s status or beliefs.” 85 FR at 59939. As an example, the Department previously articulated a view that, under a “true all-comers policy,” “pro-choice groups could not bar leadership positions from pro-life individuals; Muslim groups could not bar leadership positions from non-Muslims; the feminist group could not bar leadership positions from misogynists; and so on.” *Id.*

<sup>30</sup> See *id.* at 59943 (“[T]hese final regulations would not interfere with an institution’s ability to enforce an anti-hazing policy, because such a policy would be a neutral, generally-applicable rule applied to all student groups.”); see also *id.* at 59940 (asserting that “§§ 75.500(d) and 76.500(d) do not enable religious student organizations to discriminate on the basis of protected classes”). Separately, the Notice of Reporting Process published after the 2020 final rule took the position that a “non-discrimination policy with enumerated protected classes is not an all-comers policy and, therefore, cannot be applied to prohibit religious student organizations from having faith-based membership or leadership criteria.” 85 FR 75311. The Notice of Reporting Process did not however explain the relationship between this statement and the statements in the preamble expressly permitting IHEs to apply neutral and generally-applicable policies.

interplay between these regulations and other nondiscrimination requirements, including the longstanding requirements to comply with Federal civil rights laws and regulations, which both §§ 75.500(a) and 76.500(a) acknowledge. Institutional stakeholders raised concerns about the regulations when commenting on the 2020 NPRM and have continued to express concerns about §§ 75.500(d) and 76.500(d). Their concerns include that the regulations are confusing and may conflict with institutional and State nondiscrimination policies, and that the Department's approach reduces institutions' ability to set individualized policies that protect First Amendment freedoms and reflect the diversity of institutional contexts and missions.<sup>31</sup>

Moreover, despite the stated purpose of these regulations, the Department has not observed that they have meaningfully increased protections of First Amendment rights for religious student organizations or campus administrators since the rule went into effect.

If IHEs *do* discriminate against religious student organizations on the basis of the organizations' beliefs or character, such organizations can and do seek relief in Federal and State courts, which have longstanding expertise in and responsibility for protecting rights under the Free Speech and Free Exercise Clauses, including in cases where there are complex, fact-dependent disputes about whether a policy is neutral and generally-applicable.<sup>32</sup> Thus, while the

Department certainly shares the view that public schools should not treat religious student organizations worse than other student organizations, we do not, at this time, believe that a threat of remedial action with respect to the Department's grants is necessary "to make the guarantees of the First Amendment, including the Free Exercise Clause, a reality at public institutions."<sup>33</sup> The Department welcomes evidence from the public regarding whether maintaining a condition specifically for institutions that receive Department grants has provided any additional protections of the First Amendment rights of religious student organizations at public institutions.

We now find reason to question the conclusions in the preamble to the 2020 final rule that the types of investigations the Department would undertake would be "limited in scope" and be "similar to the types of investigations that the Department currently conducts."<sup>34</sup> The First Amendment is a complex area of law with an intricate body of relevant case law.<sup>35</sup> Closely contested cases, such as those in which there is some uncertainty about whether a public institution's policy is neutral and generally-applicable or about whether the institution has applied such policies without discriminating on the basis of a religious organization's beliefs or character, are typically very fact-intensive, and litigated thoroughly through the courts. A proper review of an alleged violation could require the Department to devote extensive resources to investigate the allegation given the nature of these cases.<sup>36</sup> Therefore, even if the Department revised the regulations to clarify this confusion, we would still be concerned that enforcement would be overly burdensome for the Department. Although the Department's Office for Civil Rights (OCR) has expertise and responsibility for investigating claims of discrimination under the Federal civil rights statutes it is authorized to enforce, no office in the Department has

historically been responsible for investigating First Amendment violations.

Further, in the 2020 final rule, we stated we believed that investigating First Amendment claims generally would be unduly burdensome and unnecessary in light of the existing First Amendment protections afforded by the Constitution and adjudicated through the courts.<sup>37</sup> Prior to the 2020 final rule, the Department's longstanding practice was to defer to courts to adjudicate First Amendment matters, including those involving religious student organizations, and to order appropriate remedies without Departmental involvement.<sup>38</sup> Those remedies may include, if the court deems appropriate, injunctive relief prohibiting the school from violating the plaintiffs' rights in a similar fashion going forward.<sup>39</sup> Indeed, for all types of First Amendment matters, the current regulations at §§ 75.500(b) and 76.500(b) indicate that the Department will presume a public institution to be in compliance with the First Amendment absent a court's final, non-default judgment.

For these reasons, and after reconsidering this issue, the Department proposes to rescind §§ 75.500(d) and 76.500(d), which would eliminate the confusion caused by the 2020 final rule and leave adjudication of these complex

<sup>37</sup> 85 FR 59923 (In the context of discussing the 2020 rule's provisions concerning free speech, stating that "[t]he Department agrees with commenters who noted that the First Amendment may be a particularly complex area of law. It is precisely for this reason, among others, that [the regulation at § 75.500(b) and (c) and § 76.500(b) and (c)] defers to courts as the adjudicators of free speech claims against public and private institutions. The Department believes our judicial system has the requisite expertise and impartiality to render such important decisions.").

<sup>38</sup> See, e.g., *Austin v. Univ. of Fla. Bd. of Trustees*, No. 1:21CV184-MW/GRJ, 2022 WL 195612 at \*28 (N.D. Fla. Jan. 21, 2022) (finding conflict-of-interest policy likely violated First Amendment rights of faculty and staff and enjoining university from enforcing it); *Bus. Leaders in Christ v. Univ. of Iowa*, 360 F. Supp. 3d 885, 909 (S.D. Iowa 2019) (finding policy violated First Amendment rights and issuing permanent injunction preventing university from enforcing policy against religious student group based on the content of statement of faith and leadership selection policies); *Coll. Republicans at San Francisco State Univ. v. Reed*, 523 F. Supp. 2d 1005, 1024 (N.D. Cal. 2007) (concluding that student organization was likely to prevail on claim that civility provisions of student code of conduct offended the First Amendment and enjoining university from basing any disciplinary proceedings on the ground that the conduct in issue was not "civil"); *Bair v. Shippensburg Univ.*, 280 F. Supp. 2d 357, 372–73 (M.D. Pa. 2003) (concluding that the university speech code likely violated the First Amendment and granting preliminary injunction to protect students' rights).

<sup>39</sup> See, e.g., *Gerlich v. Leath*, 861 F.3d 697 (8th Cir. 2017); *Just. For All v. Faulkner*, 410 F.3d 760 (5th Cir. 2005); *Moore v. Watson*, 838 F. Supp. 2d 735 (N.D. Ill. 2012).

<sup>31</sup> The Department is also currently a defendant in litigation challenging the material condition added by this provision. In January 2021, the Secular Student Alliance, a nonprofit organization, and Declan A. Galli, a student at California Polytechnic State University, sued the Department, alleging that the Department lacked statutory authority to issue this provision, that the provision violates the First Amendment by granting preferential treatment to religious student organizations because it allegedly bars public institutions from requiring religious student organizations to comply with nondiscrimination requirements, and that the Department did not adequately respond to comments during the rulemaking process. See Complaint, *Secular Student Alliance et al. v. U.S. Dep't of Educ.*, No. 21-cv-00169 (D.D.C. Jan. 19, 2021).

<sup>32</sup> See, e.g., *Ratio Christi at the University of Nebraska-Lincoln et al. v. Members of the Board of Regents of the University of Nebraska et al.*, Case No. 4:21-cv-03301 (Oct. 27, 2021) (Complaint) (challenging application of campus speaker policy and alleging refusal to fund event because of student organization's Christian viewpoint); *Ratio Christi at the University of Houston-Clear Lake et al. v. Khaton et al.*, Case No. 4:21-cv-03503 (S.D. Tex. Oct. 25, 2021) (Complaint) (challenging university refusal to recognize religious student group allegedly based on its religious beliefs and leadership requirements); *InterVarsity Christian Fellowship/USA v. Bd. of Governors of Wayne State Univ.*, 534 F. Supp. 3d 785, 825 (E.D. Mich. 2021)

(finding that university's revocation of Christian student organization's recognized status was not neutral and violated organization's First Amendment rights).

<sup>33</sup> 85 FR at 59943.

<sup>34</sup> Cf. 85 FR 59945 (making similar observations in the context of discussing the 2020 rule's provisions concerning free speech).

<sup>35</sup> Id. at 59919, 59922–23.

<sup>36</sup> For example, a recent decision against the University of Iowa for selective enforcement of a non-discrimination policy against a religious group awarded plaintiffs \$533,508 in attorney's fees and expenses to cover an estimated 873 billed hours. See *InterVarsity Christian Fellowship, et al. v. The University of Iowa, et al.*, Case No. 3:18-cv-00080 (S.D. Iowa Nov. 18, 2021) (Order).

and important constitutional questions to the institutions themselves, their communities, and the judiciary. This rescission would thus return the Department to its longstanding role in this area.

This rescission would not alter the Department's commitment to religious freedom, which is enshrined in the First Amendment to the U.S. Constitution as a fundamental human right that contributes to the vibrancy, diversity, and strength of our nation. President Biden has emphasized the importance of this freedom repeatedly. As he has said, "ensuring freedom of religion remains as important as ever" today, and "the work of protecting religious freedom, for people of all faiths and none, is never finished."<sup>40</sup> A rescission of this rule also would not alter the Department's commitment to emphasize the importance of First Amendment protections, including religious freedom protections, at public IHEs. The Department will continue to encourage all IHEs to protect students' opportunities to associate with fellow members of their religious communities, to share the tenets of their faith with others, and to express themselves on campus about religious and nonreligious matters alike.

### Executive Orders 12866 and 13563

#### *Regulatory Impact Analysis*

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

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is a significant regulatory action subject to review by OMB under section 3(f)(4) of Executive Order 12866.

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

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

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

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

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

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

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

We are issuing these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

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

In accordance with both Executive Orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from IHEs reviewing regulations to ensure they are appropriately administering the Department's programs and activities.

Students and public IHEs would benefit from the rescission of §§ 75.500(d) and 76.500(d) because it would reduce stakeholder confusion about what policies are allowable. Rescinding these provisions would also reduce burdens on the Department.

### Discussion of Costs and Benefits

The Department has analyzed the costs and benefits of complying with these proposed regulations. Rescinding §§ 75.500(d) and 76.500(d) would remove language prohibiting public institutions that are grantees or subgrantees from denying any religious student organization any right, benefit, or privilege that is otherwise afforded to other student organizations because of the religious student organization's beliefs, practices, policies, speech, membership standards, or leadership standards, which are informed by sincerely-held religious beliefs as a material condition of the Department's grants.

#### *Costs to Rescinding the Regulations*

For purposes of these estimates, the Department assumes that approximately 1,217 public IHEs are currently grant recipients under 34 CFR parts 75 and 76. We assume that most activities outlined below would be conducted by an attorney at a rate of \$141.10 per hour.<sup>41</sup>

To estimate the cost of reviewing the proposed rule, we assume that representatives of all 1,217 institutions receiving grants under 34 CFR parts 75 and 76 will review the proposed and final rules. We estimate that these reviews will take, on average, a total of one hour per institution. We estimate a one-time cost of approximately

<sup>41</sup> Estimates based on a median hourly wage for lawyers employed by colleges, universities, and professional schools, State government owned from the May 2020 National Occupational Employment and Wage Estimates by ownership, published by the Bureau of Labor Statistics ([www.bls.gov/oes/current/611300\\_2.htm#23-0000](http://www.bls.gov/oes/current/611300_2.htm#23-0000)). We have used loaded wage rates, assuming a factor of 2.0 to account for both the employer cost for employee compensation and overhead costs.

<sup>40</sup> Statement by President-elect Biden on Religious Freedom Day. The American Presidency Project. January 16, 2021, <https://www.presidency.ucsb.edu/documents/statement-president-elect-biden-religious-freedom-day?msclid=d7438aa6aa0211ecb203ca81d166d3c2>.

\$171,719 in total across these grantees to review.

While the Department recognizes that some institutions may take longer to complete this review, many institutions will likely take less time, instead relying on high-level summaries or overviews, such as those produced by a central office for an entire university system. The current regulations were intended to align with existing constitutional requirements. As such, rescinding the regulations would have a de minimis effect on their operations and, therefore, we do not anticipate a substantial number of entities devoting significant time to reviewing this proposed rule. We invite comment on whether there are additional costs that relevant entities may incur related to the rescission of these regulations.

The Department has not received any complaints regarding alleged violations of §§ 75.500(d) and 76.500(d) at the time of publishing this document. Accordingly, we estimate that we will receive fewer than 5 complaints annually related to alleged violations of this condition. Additionally, we continue to believe institutions generally make a good-faith effort to abide by the First Amendment irrespective of the implementation of the 2020 final rule, and we assume that compliance with the First Amendment has not generated additional burden for IHEs.<sup>42</sup> However, IHEs have expressed confusion about the interplay of the conditions in paragraph (d) of §§ 75.500 and 76.500 and Federal and State nondiscrimination laws, and we do estimate that this confusion may have generated burden but do not have a measurable burden estimate at this time. The Department specifically invites public comment on the extent to which compliance with paragraph (d) of §§ 75.500 and 76.500 of the 2020 final rule have generated burdens for regulated entities and the likely estimated number of complaints.

The Department estimates that rescinding §§ 75.500(d) and 76.500(d) would not have costs for students or campus communities. We have not identified that these provisions have added material additional protections for student groups whose stated mission is religious in nature at public IHEs. Therefore, the proposed rescission would not impose a cost on these communities.

The Department assumes that rescinding §§ 75.500(d) and 76.500(d) would generate no new burdens or costs aside from those discussed herein but invites public comment on potential

costs or burdens generated by rescinding these regulations and whether these provisions have added material protections for religious student groups at public IHEs.

#### *Benefits To Rescinding the Regulations*

Rescinding §§ 75.500(d) and 76.500(d) would reduce the continued confusion that IHEs and others have cited over how those paragraphs intersect with First Amendment requirements. We believe this would benefit IHEs and the students they serve by removing regulations that create confusion and would instead allow IHEs to design and enforce policies that best serve their student bodies and that are consistent with applicable laws and regulations.

Additionally, rescinding these regulations would eliminate the burden on the Department of Education to investigate alleged First Amendment violations under §§ 75.500(d) and 76.500(d) and determine and administer penalties for IHEs that violate grant conditions under those provisions. First Amendment cases are fact-specific and would require scrutiny from the Department's Office of General Counsel and related offices to review complaints to determine appropriate Departmental action in response to the alleged violations, and no office in the Department has historically been responsible for investigating or adjudicating First Amendment violations. The amount of time needed to review a specific alleged violation would depend upon the nature of the violation, and therefore we are not able to predict how much this rescission would decrease the Department's burden. However, as stated above, the Department has observed that cases can require a substantial number of hours to adjudicate (as discussed in footnote 36).

We invite comments on any of the described benefits, including the potential elimination of confusion related to the requirements outlined in §§ 75.500(d) and 76.500(d). We also invite comments that identify benefits of rescinding §§ 75.500(d) and 76.500(d) that we have not identified.

#### *Alternatives Considered*

The Department considered retaining the existing regulations. However, upon review of the regulations and hearing from stakeholders, we propose to rescind the existing regulations in paragraph (d) of §§ 75.500 and 76.500 because we tentatively believe these provisions' costs outweigh any potential benefits.

We considered revising §§ 75.500(d) and 76.500(d) to clarify that neutral, generally-applicable policies would be

permissible. However, if the regulations were revised in this manner, the Department would still be responsible for investigating alleged violations. Instead, we believe the Department should return to our historical role in which we have not adjudicated alleged violations of the First Amendment. Courts are better suited to handle such matters.

We invite comments on alternatives that would address the concerns we have identified about the current regulations.

#### *Clarity of the Regulations*

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, "\$ 75.500 (b) Public Institutions and the First Amendment.")
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

#### *Regulatory Flexibility Act Certification*

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities, as the proposed rescission does not modify or change existing legal requirements for public IHEs. We invite the public to comment on our certification that these regulations would not have a significant economic impact on a substantial number of small entities.

<sup>42</sup> 85 FR 3216–3217.

The Small Business Administration (SBA) defines “small institution” using data on revenue, market dominance, tax filing status, governing body, and population. Most entities to which the

Office of Postsecondary Education’s (OPE) regulations apply are postsecondary institutions; however, many of these institutions do not report such data to the Department. As a result,

the Department defines “small entities” by reference to enrollment,<sup>43</sup> to allow meaningful comparison of regulatory impact across all types of higher education institutions.<sup>44</sup>

TABLE 1—SMALL INSTITUTIONS UNDER ENROLLMENT-BASED DEFINITION

Level	Type	Small	Total	Percent
2-year .....	Public .....	328	1,182	27.75
4-year .....	Public .....	56	747	7.50
Total .....	.....	384	1,929	19.91

Source: 2018–19 data reported to the Department.

### Paperwork Reduction Act of 1995

These proposed regulations do not impose or remove information collection requirements for public institutions. Therefore, the Paperwork Reduction Act is not implicated.

### Intergovernmental Review

These programs are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

### Assessment of Education Impact

In accordance with section 411 of GEPA, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

**Accessible Format:** On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

**Electronic Access to This Document:** The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must

have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

### List of Subjects

#### 34 CFR Part 75

Accounting, Copyright, Education, Grant programs—education, Indemnity payments, Inventions and patents, Private schools, Reporting and recordkeeping requirements, Youth organizations.

#### 34 CFR Part 76

Accounting, Administrative practice and procedure, American Samoa, Education, Grant programs—education, Guam, Northern Mariana Islands, Pacific Islands Trust Territory, Prisons, Private schools, Reporting and recordkeeping requirements, Virgin Islands, Youth organizations.

### Nasser Paydar,

*Assistant Secretary, Office of Postsecondary Education.*

For the reasons discussed in the preamble, the Secretary of Education proposes to amend parts 75 and 76 of title 34 of the Code of Federal Regulations as follows:

### PART 75—DIRECT GRANT PROGRAMS

■ 1. The authority citation for part 75 continues to read as follows:

independently owned and operated and not dominant in their field of operation, or as “small entities” if they were institutions controlled by governmental entities with populations below 50,000. Those definitions resulted in the categorization of all private nonprofit organization as small and no public institutions as small. Under the previous definition, proprietary institutions were considered small if they were independently

**Authority:** 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

### § 75.500 [Amended]

■ 2. Section 75.500 is amended by removing paragraph (d) and redesignating paragraph (e) as new paragraph (d).

### PART 76—STATE-ADMINISTERED PROGRAMS

■ 3. The authority citation for part 76 continues to read as follows:

**Authority:** 20 U.S.C. 1221e–3 and 3474, unless otherwise noted.

### § 76.500 [Amended]

■ 4. Section 76.500 is amended by removing paragraph (d) and redesignating paragraph (e) as new paragraph (d).

[FR Doc. 2023–03670 Filed 2–21–23; 8:45 am]

BILLING CODE 4000–01–P

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 300

[EPA–HQ–OLEM–2021–0486; EPA–HQ–OLEM–2022–0828; EPA–HQ–OLEM–2022–0854; EPA–HQ–OLEM–2022–0947; EPA–HQ–OLEM–2022–0948; EPA–HQ–OLEM–2022–0949; EPA–HQ–OLEM–2022–0964; EPA–HQ–OLEM–2022–0965; EPA–HQ–OLEM–2022–0966; EPA–HQ–OLEM–2022–0968; EPA–HQ–SFUND–2023–0021; FRL–10633–01–OLEM]

### Proposed Deletion From the National Priorities List

**AGENCY:** Environmental Protection Agency (EPA).

owned and operated and not dominant in their field of operation with total annual revenue below \$7,000,000. Using FY 2017 IPEDs finance data for proprietary institutions, 50 percent of 4-year and 90 percent of 2-year or less proprietary institutions would be considered small. By contrast, an enrollment-based definition applies the same metric to all types of institutions, allowing consistent comparison across all types.

<sup>43</sup> Two-year postsecondary educational institutions with enrollment of less than 500 full-time equivalent (FTE) and four-year postsecondary educational institutions with enrollment of less than 1,000 FTE.

<sup>44</sup> In previous regulations, the Department categorized small businesses based on tax status. Those regulations defined “non-profit organizations” as “small organizations” if they were



**ACTION:** Proposed rule; notice of intent.

**SUMMARY:** The Environmental Protection Agency (EPA) is issuing a Notice of Intent to delete three sites and partially delete eight sites from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the states, through their designated state agency, have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

**DATES:** Comments regarding this proposed action must be submitted on or before March 24, 2023.

**ADDRESSES:** EPA has established a docket for this action under the Docket Identification numbers included in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document. Submit your comments, identified by the appropriate Docket ID number, by one of the following methods:

- <https://www.regulations.gov>.

Follow on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

- *Email:* Table 2 in the

**SUPPLEMENTARY INFORMATION** section of this document provides an email address to submit public comments for the proposed deletion action.

*Instructions:* Direct your comments to the Docket Identification number

included in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <https://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <https://www.regulations.gov> or email. The <https://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <https://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* EPA has established a docket for this action under the Docket Identification included in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document. All documents in the docket are listed on the <https://www.regulations.gov> website. The Final Close-Out Report (FCOR, for a full site deletion) or the Partial Deletion Justification (PDJ, for a partial site deletion) is the primary document which summarizes site information to support the deletion. It is typically written for a broad, non-technical audience and this document is included in the deletion docket for each of the sites in this rulemaking. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Docket materials are available through <https://www.regulations.gov> or

at the corresponding Regional Records Center. Location, address, and phone number of the Regional Records Centers follows.

*Regional Records Center:*

- Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4308.
- Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1600 John F. Kennedy Boulevard, Mail code 3MD50, Philadelphia, PA 19103; 215/814–5382.
- Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, Mail code 9T25, Atlanta, GA 30303.
- Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Records Manager, Mail code SRC–7J, Metcalfe Federal Building, 7th Floor South, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.
- Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mail code SUPRSTAR, Lenexa, KS 66219; 913/551–7956.
- Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mail code Records Center, Denver, CO 80202–1129; 303/312–7273.
- EPA Headquarters Docket Center Reading Room (deletion dockets for all states), William Jefferson Clinton (WJC) West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004, 202/566–1744.

EPA staff listed below in the **FOR FURTHER INFORMATION CONTACT** section may assist the public in answering inquiries about deleted sites and accessing deletion support documentation, determining whether there are additional physical deletion dockets available, or if COVID restrictions affect deletion docket access.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our federal partners so that we can respond rapidly as conditions change regarding COVID.

**FOR FURTHER INFORMATION CONTACT:**

- Mabel Garcia, U.S. EPA Region 2 (NJ, NY, PR, VI), [garcia.mabel@epa.gov](mailto:garcia.mabel@epa.gov), 212/637–4356.
- Andrew Hass, U.S. EPA Region 3 (DE, DC, MD, PA, VA, WV), [hass.andrew@epa.gov](mailto:hass.andrew@epa.gov), 215/814–2049.
- Leigh Lattimore, U.S. EPA Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), [lattimore.leigh@epa.gov](mailto:lattimore.leigh@epa.gov), 404/562–8768.
- Karen Cibulskis, U.S. EPA Region 5 (IL, IN, MI, MN, OH, WI), [cibulskis.karen@epa.gov](mailto:cibulskis.karen@epa.gov), 312/886–1843.
- Maria Morey, U.S. EPA Region 7 (IA, KS, MO, NE), [morey.maria@epa.gov](mailto:morey.maria@epa.gov), 913/551–7079.



• Linda Kiefer, U.S. EPA Region 8 (CO, MT, ND, SD, UT, WY), [kiefer.linda@epa.gov](mailto:kiefer.linda@epa.gov), 303/312-6689.  
 • Charles Sands, U.S. EPA Headquarters, [sands.charles@epa.gov](mailto:sands.charles@epa.gov), 202/566-1142.

#### SUPPLEMENTARY INFORMATION:

#### Table of Contents

- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Full Site or Partial Site Deletion

#### I. Introduction

EPA is issuing a proposed rule to delete three sites and partially delete eight sites from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the NCP, which EPA created under section 105 of the CERCLA statute of 1980, as amended. EPA maintains the NPL as those sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). These partial deletions are proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466, (November 1, 1995). As described in 40 CFR 300.425(e)(3) of the NCP, a site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

EPA will accept comments on the proposal to delete or partially delete these sites for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III of this document discusses procedures that EPA is using for this action. Section IV of this document discusses the site or portion of the site proposed for deletion and demonstrates how it meets the deletion criteria, including reference documents with the rationale and data principally relied upon by the EPA to determine that the Superfund response is complete.

#### II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e),

sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

- i. Responsible parties or other persons have implemented all appropriate response actions required;
- ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
- iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

#### III. Deletion Procedures

The following procedures apply to the deletion or partial deletion of the sites in this proposed rule:

- (1) EPA consulted with the respective state before developing this Notice of Intent for deletion.
- (2) EPA has provided the state 30 working days for review of site deletion documents prior to publication of it today.
- (3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate.
- (4) The state, through their designated state agency, has concurred with the proposed deletion action.

(5) Concurrently, with the publication of this Notice of Intent for deletion in the **Federal Register**, a notice is being published in a major local newspaper of general circulation near the site. The newspaper announces the 30-day public comment period concerning the proposed action for deletion.

(6) The EPA placed copies of documents supporting the proposed deletion in the deletion docket, made these items available for public inspection, and copying at the Regional Records Center identified above.

If comments are received within the 30-day comment period on this document, EPA will evaluate and respond accordingly to the comments before making a final decision to delete or partially delete the site. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete or partially delete the site, the EPA will publish a final Notice of Deletion or Partial Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and included in the site information repositories listed above.

Deletion of a site or a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site or a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

#### IV. Basis for Full Site or Partial Site Deletion

The site to be deleted or partially deleted from the NPL, the location of the site, and docket number with information including reference documents with the rationale and data principally relied upon by the EPA to determine that the Superfund response is complete are specified in Table 1. The NCP permits activities to occur at a deleted site, or that media or parcel of a partially deleted site, including operation and maintenance of the remedy, monitoring, and five-year reviews. These activities for the site are entered in Table 1, if applicable, under Footnote such that; 1= site has continued operation and maintenance of the remedy, 2= site receives continued monitoring, and 3= site five-year reviews are conducted.

TABLE 1

Site name	City/county, state	Type	Docket No.	Footnote
Haviland complex .....	Town of Hyde Park, NY ....	Full .....	EPA-HQ-OLEM-2022-0968.	1, 2, 3
Smithtown Ground Water Contamination.	Smithtown, NY .....	Full .....	EPA-HQ-OLEM-2022-0964.	
Jackson Ceramix .....	Falls Creek, PA .....	Partial .....	EPA-HQ-OLEM-2022-0854.	
Fort Hartford Coal Co. Stone Quarry.	Olaton, KY .....	Full .....	EPA-HQ-OLEM-2022-0948.	
Marine Corps Logistics Base.	Albany, GA .....	Partial .....	EPA-HQ-OLEM-2021-0486.	
Redstone Arsenal (USARMY/NASA).	Huntsville, AL .....	Partial .....	EPA-HQ-OLEM-2022-0949.	
Tyndall Air Force Base .....	Panama City, FL .....	Partial .....	EPA-HQ-OLEM-2022-0947.	
Aircraft Components (D & L Sales).	Benton Harbor, MI .....	Partial .....	EPA-HQ-OLEM-2022-0828.	
Omaha Lead .....	Omaha, NE .....	Partial .....	EPA-HQ-SFUND-2023-0021.	
Anaconda Co. Smelter .....	Anaconda, MT .....	Partial .....	EPA-HQ-OLEM-2022-0965.	
Eagle Mine .....	Minturn/Redcliff, CO .....	Partial .....	EPA-HQ-OLEM-2022-0966.	1, 3

Table 2 includes information concerning whether the full site is proposed for deletion from the NPL or a description of the area, media or

Operable Units (OUs) of the NPL site proposed for partial deletion from the NPL, and an email address to which public comments may be submitted if

the commenter does not comment using <https://www.regulations.gov>.

TABLE 2

Site name	Full site deletion (full) or media/parcels/description for partial deletion	E-mail address for public comments
Haviland Complex .....	Full .....	<i>duda.damian@epa.gov.</i>
Smithtown Ground Water Contamination .....	Full .....	<i>henry.sherrel@epa.gov.</i>
Jackson Ceramix .....	Soils and unsaturated subsurface vadose zones from OU 1 Baseball Field.	<i>debonis.michael01@epa.gov.</i>
Fort Hartford Coal Co. Stone Quarry .....	Full .....	<i>jackson.brad@epa.gov.</i>
Marine Corps Logistics Base .....	OU 3 Soils .....	<i>martin.anna@epa.gov.</i>
Redstone Arsenal (USARMY/NASA) .....	Soils and pipeline sediments from OU-26 .....	<i>jackson.brad@epa.gov.</i>
Tyndall Air Force Base .....	13 specified operable units .....	<i>jackson.brad@epa.gov.</i>
Aircraft Components (D & L Sales) .....	OU 1 radiological cleanup .....	<i>cibulskis.karen@epa.gov.</i>
Omaha Lead .....	13 residential properties .....	<i>morey.maria@epa.gov.</i>
Anaconda Co. Smelter .....	OU 15 Mill Creek .....	<i>coleman.charles@epa.gov.</i>
Eagle Mine .....	5.31 acres of soils in the OU 3 North Property Redevelopment—Trestle Area.	<i>chan.sydney@epa.gov.</i>

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of a site from the NPL does not affect responsible party liability in the unlikely event that

future conditions warrant further actions.

#### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

#### Larry Douchand,

*Office Director, Office of Superfund Remediation and Technology Innovation.*

[FR Doc. 2023–03148 Filed 2–21–23; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare & Medicaid Services****42 CFR Part 402****Office of the Secretary****45 CFR Part 102****[CMS–6061–RCN]****RIN 0938–AT86****Medicare Secondary Payer and Certain Civil Money Penalties; Extension of Timeline for Publication of Final Rule**

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

**ACTION:** Extension of timeline.

**SUMMARY:** This document announces the 1-year extension of the timeline for publication of the final rule. Section 1871(a)(3)(A) of the Social Security Act (the Act) requires us to establish and publish a regular timeline for the publication of final regulations based on the previous publication of a proposed regulation. Section 1871(a)(3)(B) of the Act allows us to extend the timeline for publication of the final rule by publishing a **Federal Register** document which includes a brief explanation of the justification for the variation in the timeline.

**DATES:** As of February 22, 2023, the timeline for the publication of the final rule to finalize the provisions of the proposed rule published on February 18, 2020 (85 FR 8793), is extended until February 18, 2024.

**ADDRESSES:** This is not a solicitation for comment. The February 18, 2020 proposed rule is available at <https://www.federalregister.gov/d/2020-02085>.

**FOR FURTHER INFORMATION CONTACT:**

Jacqueline Cipa, (410) 786–3259.

**SUPPLEMENTARY INFORMATION:** In the February 18, 2020 **Federal Register** (85 FR 8793), we published a proposed rule titled “Medicare Secondary Payer and Certain Civil Money Penalties” that specified how and when CMS would calculate and impose civil money penalties (CMPs) when group health plan (GHP) and non-group health plan (NGHP) responsible reporting entities (RREs) fail to meet their Medicare Secondary Payer (MSP) reporting obligations, as required under sections 1862(b)(7) and 1862(b)(8) of the Social Security Act (the Act). This document announces an extension of the timeline for publication of the final rule.

Section 1871(a)(3)(A) of the Act requires us to establish and publish a regular timeline for the publication of final regulations based on the previous publication of a proposed regulation.

Section 1871(a)(3)(B) of the Act allows the regular timeline for publishing Medicare final regulations to vary based on the complexity of the regulation, number and scope of comments received, and other related factors. The initial targeted timeline for a rule cannot exceed 3 years from the date of publishing the proposed regulation, absent exceptional circumstances. For the February 18, 2020 proposed rule, the timeline established by the Secretary provided a targeted publication date of February 18, 2023. The Secretary may extend the initial targeted publication date of the final regulation if the Secretary provides public notice, including a brief explanation of the justification for the variation, no later than the regulation’s previously established proposed publication date.

Consistent with the aforementioned statutory provision, we are providing a brief explanation of the agency’s circumstances that have led us to vary

the timeline for publishing the final rule. These are exceptional circumstances, although the Act does not require exceptional circumstances for such extensions. (For more detailed information, see footnote number 24 in the February 1, 2023 **Federal Register** document (88 FR 6648)). We are not able to meet the initial targeted 3-year timeline for publication due to delays related to the need for additional, time-consuming data analysis resulting from public inquiry. It was not possible to conclude this data analysis on the initial, targeted timeline for the proposed rule because public listening sessions raised additional concerns that CMS believed were important to properly and thoroughly research prior to publishing the final rule. We have decided that it is critical to conduct additional analysis about the economic impact of the rule. We are preparing additional data analysis and predictive modeling to better understand the economic impact of the proposed rule across different insurer types. This data analysis is designed to review the actual current reporting and model potential penalties that would be imposed were the final rule in place. Along with delays resulting from the agency’s focus on the COVID–19 public health emergency, we determined that additional time is needed to address the complex policy and operational issues that were raised. We are extending the publication deadline so as to provide the most accurate, complete, and robust data possible to confirm the intent and economic impact of the final rule.

This document extends the timeline for publication of the final rule for one year until February 18, 2024.

**Elizabeth J. Gramling,**

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

[FR Doc. 2023–03621 Filed 2–17–23; 4:15 pm]

**BILLING CODE 4120–01–P**

# Notices

Federal Register

Vol. 88, No. 35

Wednesday, February 22, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Information Collection: Special Uses

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice of approved revisions to information collection requirement.

OMB has approved the Forest Service's proposed revisions to information collection requirement (ICR) 0596-0082 under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The proposed revisions to ICR 0596-0082 were published in the **Federal Register** for public comment on September 15, 2020 (85 FR 57181), as required by the Paperwork Reduction Act and section 14(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974, 16 U.S.C. 1612(a). The Forest Service's responses to comments received on the proposed revisions to ICR 0596-0082 are posted at <https://www.fs.usda.gov/managing-land/lands-reealty-management/forms>.

Dated: February 15, 2023.

**Kevin Knesek,**

*Acting Deputy Director, Lands and Realty Management and Minerals & Geology, National Forest System.*

[FR Doc. 2023-03600 Filed 2-21-23; 8:45 am]

**BILLING CODE 3411-15-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Gifford Pinchot Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Gifford Pinchot Resource Advisory Committee (RAC) will hold two public meetings according to the details shown below. The committee is authorized under the Secure Rural

Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with title II of the Act, as well as make recommendations on recreation fee proposals for sites on the Gifford Pinchot National Forest, consistent with the Federal Lands Recreation Enhancement Act. General information and meeting details can be found at the following website: <https://www.fs.usda.gov/main/giffordpinchot/workingtogether/advisorycommittees>.

**DATES:** The Recreation Fee Proposal meeting will be held on March 9, 2023, 8:30 a.m.–12 p.m. Pacific Standard Time. The SRS/Title II meeting will be held on March 10, 2023, 9:30 a.m.–3:30 p.m. Pacific Standard Time. All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Oral Comments:** Individuals wishing to make an oral statement at any of the meetings should make a request in writing by March 6, 2023 to be scheduled on the agenda for that particular meeting.

**Written Comments:** Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or by March 31, 2023.

**ADDRESSES:** The Recreation Fee Proposal RAC meeting is open to the public and will be held virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The SRS/Title II RAC meeting is open to the public and will be held at the Gifford Pinchot National Forest Headquarters, located at 987 McClellan Rd., Vancouver, Washington 98661. The public may also join virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

**FOR FURTHER INFORMATION CONTACT:** Gala Miller, Designated Federal Officer (DFO), by phone at 360-891-5014 or email at [gala.miller@usda.gov](mailto:gala.miller@usda.gov). Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 800-877-8339, 24 hours a day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:** The purpose of the SRS/Title II meeting is to:

1. Elect a Chairperson;
  2. Hear from Title II project proponents and discuss Title II project proposals;
  3. Make funding recommendations on Title II projects;
  4. Approve meeting minutes.
- The purpose of the Recreation Fee Proposal meeting is to:
1. Discuss the proposed Gifford Pinchot Recreation Fee Proposal;
  2. Make recommendations on recreation fee proposals;
  3. Approve meeting minutes.

The meetings are open to the public. The agendas will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement at any of the meetings should make a request in writing by March 6, 2023 to be scheduled on the agenda for that particular meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or by March 31, 2023.

Written comments and requests for time for oral comments must be sent to Gala Miller, Gifford Pinchot National Forest Headquarters, 987 McClellan Rd., Vancouver, WA 98661; or by email to [gala.miller@usda.gov](mailto:gala.miller@usda.gov). Persons with disabilities who require alternative means of communication for program information (*e.g.*, Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202-720-2600 (voice and TTY) or contact USDA through the Federal Relay

Service at 800–877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: February 15, 2023.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2023–03660 Filed 2–21–23; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–570–601]

#### **Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On January 3, 2023, the U.S. Department of Commerce (Commerce) published the preliminary results of the changed circumstances review (CCR) of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished from the People's Republic of China (China). Commerce preliminarily determined that Stemco Vehicle Technology (Suzhou) Co., Ltd. (Stemco) is the successor-in-interest to GGB Bearing Technology (Suzhou) Co., Ltd. (GGB). For these final results, Commerce continues to find that Stemco is the successor-in-interest to GGB.

**DATES:** Applicable February 22, 2023.

#### **FOR FURTHER INFORMATION CONTACT:**

Melissa Porpotage, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1413.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On January 3, 2023, Commerce published the *Initiation and Preliminary Results*<sup>1</sup> of this CCR, in which Commerce preliminarily found that Stemco is the successor-in-interest to GGB in the context of the *Order*.<sup>2</sup> We provided interested parties with the opportunity to comment and request a public hearing regarding the *Initiation and Preliminary Results*.<sup>3</sup> On February 2, 2023, Stemco submitted a letter in lieu of a case brief noting that Stemco supports Commerce's findings and requests that Commerce affirm the *Initiation and Preliminary Results*.<sup>4</sup> We received no other comments.

##### **Scope of the Order**

Merchandise covered by the *Order* are tapered roller bearings and parts thereof, finished and unfinished, from China; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.70.6060, 8708.99.2300, 8708.99.4850, 8708.99.6890, 8708.99.8115, and 8708.99.8180. Although the HTSUS item numbers are provided for convenience and customs

<sup>1</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 88 FR 49 (January 3, 2023) (*Initiation and Preliminary Results*).

<sup>2</sup> *Id.*; see also *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China*, 52 FR 22667 (June 15, 1987), as amended in *Tapered Roller Bearings from the People's Republic of China: Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order in Accordance with Decision Upon Remand*, 55 FR 6669 (February 26, 1990) (*Order*).

<sup>3</sup> See *Initiation and Preliminary Results*, 88 FR at 50.

<sup>4</sup> See Stemco's Letter, "Stemco's Letter in Lieu of Case Brief," dated February 2, 2023 (Stemco's Letter).

purposes, the written description of the scope of the *Order* is dispositive.

##### **Final Results of Review**

Based on the comments received<sup>5</sup> and finding no information or evidence on the record that calls into question the *Initiation and Preliminary Results*, we continue to find that Stemco is the successor-in-interest to GGB.<sup>6</sup> As a result of this determination and consistent with established practice, we find that Stemco is entitled to receive the cash deposit rate assigned to GGB. Consequently, Commerce will instruct U.S. Customs and Border Protection to suspend entries of subject merchandise produced or exported by Stemco at GGB's current cash deposit rate of 7.04 percent.<sup>7</sup> This cash deposit requirement will be effective on the publication date of these final results and shall remain in effect until further notice.

##### **Administrative Protective Order**

This notice serves as a final reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

##### **Notification to Interested Parties**

This notice is issued and published in accordance with sections 751(b)(1) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.216 and 351.221(c)(3)(i).

Dated: February 15, 2023.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2023–03641 Filed 2–21–23; 8:45 am]

**BILLING CODE 3510–DS–P**

<sup>5</sup> *Id.*

<sup>6</sup> See *Initiation and Preliminary Results*, 88 FR at 49–50.

<sup>7</sup> See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 84 FR 6132 (February 26, 2019).

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-570-831]

**Fresh Garlic From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review; 2021-2022**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** Based upon a timely withdrawal of the new shipper review (NSR) request, the Department of Commerce (Commerce) is rescinding this NSR covering the antidumping duty order on fresh garlic from the People's Republic of China (China) during the period of review of November 1, 2021, through October 31, 2022.

**DATES:** Applicable February 22, 2023.

**FOR FURTHER INFORMATION CONTACT:** Charles DeFilippo, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-3797.

**SUPPLEMENTARY INFORMATION:****Background**

Based on a timely request for review, Commerce initiated an NSR of Jining Huahui International Co., Ltd. (Huahui) for the period of November 1, 2021, through October 31, 2022, pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended and 19 CFR 351.214(d).<sup>1</sup> The request for this review has been timely withdrawn.<sup>2</sup>

**Scope of the Order**<sup>3</sup>

The products covered by the *Order* are all grades of garlic, whether whole or separated into constituent cloves. For a complete description of the scope, see *Order*.

**Rescission of Review**

On January 17, 2023, Huahui withdrew its request for an NSR of Huahui's entries of fresh garlic from t China during the period of review of November 1, 2021, through October 31, 2022. Pursuant to 19 CFR 351.214(f)(1), Commerce will rescind an NSR if a producer or exporter that requested a review withdraws its request no later

than 60 days after the date of publication of the notice of initiation of the requested review. Huahui withdrew its request within 60 days of the date of publication of the notice of initiation for the requested review. No other parties requested an NSR for the period noted above. Therefore, in accordance with 19 CFR 351.214(f)(1), Commerce is rescinding the NSR in its entirety.

**Assessment Rates**

Commerce does not intend to instruct U.S. Customs and Border Protection to liquidate the relevant entries because the entries are subject to the administrative review covering the period November 1, 2021, through October 31, 2022, initiated on January 3, 2023.<sup>4</sup>

**Cash Deposit Requirements**

Because we are rescinding this NSR, we are not determining a company-specific cash deposit rate for Huahui in this review. Huahui continues to be part of the China-wide entity and is, therefore, subject to the China-wide entity cash deposit rate.

**Administrative Protective Order**

This notice serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

**Notification to Interested Parties**

We are issuing and publishing this rescission in accordance with 19 CFR 351.214(f)(3).

Dated: February 14, 2023.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2023-03653 Filed 2-21-23; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

## International Trade Administration

[A-570-898, A-469-814]

**Chlorinated Isocyanurates From the People's Republic of China and Spain: Continuation of Antidumping Duty Orders**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) have determined that revocation of the antidumping duty (AD) orders on chlorinated isocyanurates (chlorinated isos) from the People's Republic of China (China) and Spain would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States. Therefore, Commerce is publishing a notice of continuation of these AD orders.

**DATES:** Applicable February 22, 2023.

**FOR FURTHER INFORMATION CONTACT:** Daniel Alexander, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-4313.

**SUPPLEMENTARY INFORMATION:****Background**

On June 24, 2005, Commerce published the AD orders on chlorinated isos from China and Spain.<sup>1</sup> On October 21, 2021, Commerce published the notice of initiation of the third sunset review of the *Orders*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>2</sup> As a result of its reviews, Commerce determined that revocation of the *Orders* would likely lead to the continuation or recurrence of dumping.<sup>3</sup> Therefore, Commerce notified the ITC of the magnitude of the dumping margins likely to prevail should the *Orders* be revoked, pursuant to sections 751(c)(1) and 752(c) of the Act. On December 27, 2022, the ITC

<sup>1</sup> See *Chlorinated Isocyanurates from Spain: Notice of Antidumping Duty Order*, 70 FR 36562 (June 24, 2005); and *Notice of Antidumping Duty Order: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 36561 (June 24, 2005) (collectively, *Orders*).

<sup>2</sup> See *Initiation of Five-Year (Sunset) Reviews*, 86 FR 54423 (October 1, 2021).

<sup>3</sup> See *Chlorinated Isocyanurates from Spain and the People's Republic of China: Final Results of the Third Expedited Sunset Reviews of the Antidumping Duty Orders*, 87 FR 4841 (January 31, 2022), and accompanying Issues and Decision Memorandum.

<sup>1</sup> See *Fresh Garlic from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 88 FR 858 (January 5, 2023).

<sup>2</sup> See Huahui's Letter, "Withdrawal of Request for New Shipper Review," dated January 17, 2023.

<sup>3</sup> See *Antidumping Duty Order: Fresh Garlic from the People's Republic of China*, 59 FR 59209 (November 16, 1994) (*Order*).

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 50, 54 (January 3, 2023).

published its determination, pursuant to section 751(c) of the Act, that revocation of the *Orders* would likely lead to the continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.<sup>4</sup>

### Scope of the Orders

The products covered by the *Orders* are chlorinated isos, which are derivatives of cyanuric acid, described as chlorinated s-triazine triones. There are three primary chemical compositions of chlorinated isos: (1) trichloroisocyanuric acid (Cl<sub>3</sub>(NCO)<sub>3</sub>); (2) sodium dichloroisocyanurate (dehydrate) (NaCl<sub>2</sub>(NCO)<sub>3</sub>(2H<sub>2</sub>O)); and (3) sodium dichloroisocyanurate (anhydrous) (NaCl<sub>2</sub>(NCO)<sub>3</sub>). The *Orders* cover all chlorinated isos. Chlorinated isos are currently classifiable under subheadings 2933.69.6015, 2933.69.021, 2933.69.6050, 3808.40.5000, 3808.50.4000 and 3808.94.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isos and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

### Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to continuation or recurrence of dumping, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders* on chlorinated isos from China and Spain. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of the *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

<sup>4</sup> See *Chlorinated Isocyanurates from China and Spain*, 87 FR 79353 (December 27, 2022).

### Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

### Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: February 14, 2023.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2023–03652 Filed 2–21–23; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648–XC787]

#### New England Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Joint VMS/Enforcement Committee and Advisory Panel via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This webinar will be held on Wednesday, March 15, 2023, at 10 a.m. Webinar registration URL information: <https://attendee.gotowebinar.com/register/4444643143448532574>.

#### ADDRESSES:

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

#### SUPPLEMENTARY INFORMATION:

### Agenda

The Committee and Advisory Panel will meet to discuss on-demand gear presentation by Northeast Fisheries Science Center gear engineering team as well as briefing on New England Fishery Management Council Gear Conflict Working Group. They will also review alternatives in the Atlantic Salmon Aquaculture Framework and identify any enforcement related concerns. The Committee and Advisory Panel will review NMFS Office of Law Enforcement priorities and Council annual priorities and enforcement-related concerns. Other business will be discussed, as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: February 16, 2023.

**Rey Israel Marquez,**

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

[FR Doc. 2023–03648 Filed 2–21–23; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648–XC770]

#### Gulf of Mexico Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will hold a two day in-person meeting of its Shrimp Advisory Panel (AP).

**DATES:** The meeting will convene Wednesday, March 15, 2023, from 8:30 a.m. to 4:30 p.m. and Thursday, March 16, 2023, from 8:30 a.m. to 2:30 p.m., EST. For agenda details, see

**SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** The meeting will take place at the Gulf Council office. Registration information will be available on the Council's website by visiting [www.gulfcouncil.org](http://www.gulfcouncil.org) and clicking on the Shrimp AP meeting on the calendar.

*Council address:* Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348-1630.

**FOR FURTHER INFORMATION CONTACT:** Dr. Matt Freeman, Economist, Gulf of Mexico Fishery Management Council; [matt.freeman@gulfcouncil.org](mailto:matt.freeman@gulfcouncil.org); telephone: (813) 348-1630.

**SUPPLEMENTARY INFORMATION:** The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's website when possible).

**Wednesday, March 15, 2023; 8:30 a.m.–4:30 p.m. EST (7:30 a.m.–3:30 p.m. CST)**

Meeting will begin with Election of Chair and Vice Chair, Adoption of Agenda, Approval of Summary from November 15, 2022, meeting, and Scope of Work. The AP will review and discuss Council Actions in Response to Motions from the November 15, 2022, Shrimp AP Meeting; receive updates on the Shrimp Effort Estimation Model and 2021 Gulf Shrimp Fishery Effort; and receive information on the Status of Secure Digital (SD) Card Returns and Update from Southeast Fishery Science Center (SEFSC) on Use of Port Agents to Promote the Return of SD Cards, including background materials.

The AP will receive updates on the National Marine Fisheries Service (NMFS) Vessel Monitoring System (VMS) and the LGL Ecological Research Associates P-Sea WindPlot projects, review the Draft Shrimp Framework Action and be updated on Congressional Funding for Shrimp Vessel Position Data Reporting, and receive information on the 2021 Gulf Shrimp Fishery Landings, the Biological Review of 2022 Texas Closure, and the 2021 Royal Red Landings.

**Thursday, March 16, 2023; 8:30 a.m.–2:30 p.m. EST (7:30 a.m.–1:30 p.m. CST)**

The AP will discuss and receive updates on Empirical Dynamic Modeling (EDM) Development for White

and Brown Shrimp; the Southeast Data, Assessment, and Review (SEDAR) Research Track; the Hurricane Ian Assessment and the Florida Seafood Industry; Wind Energy Areas in the Gulf of Mexico; and Southeast Regional Office (SERO) Protected Resources Update, Sea Turtle Take and Turtle Excluder Device (TED) Compliance.

Lastly, the AP will receive any public testimony and discuss other business items, including a Status update on Gulf of Mexico Atlantic ecosystem model development.

—Meeting Adjourns

The in-person meeting will be broadcast via webinar. You may register by visiting [www.gulfcouncil.org](http://www.gulfcouncil.org) and clicking on the Shrimp Advisory Panel meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on [www.gulfcouncil.org](http://www.gulfcouncil.org) as they become available.

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency at least 5 working days prior to the meeting.

*Special Accommodations*

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid or accommodations should be directed to Kathy Pereira, [kathy.pereira@gulfcouncil.org](mailto:kathy.pereira@gulfcouncil.org), at least 5 days prior to the meeting date.

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

Dated: February 16, 2023.

**Rey Israel Marquez,**

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

[FR Doc. 2023-03647 Filed 2-21-23; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**Interagency Marine Debris Coordinating Committee Meeting**

**AGENCY:** National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** Notice is hereby given of a virtual public meeting of the Interagency Marine Debris Coordinating Committee (IMDCC). IMDCC members will discuss Federal marine debris activities, with a particular emphasis on the topics identified in the section on *Matters to Be Considered*.

**DATES:** The virtual public meeting will be held on March 15, 2023, from 2 p.m. to 3 p.m. Eastern Time (ET).

**ADDRESSES:** The meeting will be held virtually using Google Meet. You can connect to the meeting using the website or phone number provided:

*Meeting link:* <https://meet.google.com/jcr-hhqu-xxt>.

*Phone:* +1 904-717-5054; PIN: 925 455 286#.

Attendance will be limited to the first 250 individuals to join the virtual meeting room. Refer to the IMDCC website at <https://marinedebris.noaa.gov/our-work/IMDCC> for the most up-to-date information on how to participate and on the agenda.

**FOR FURTHER INFORMATION CONTACT:** Ya'el Seid-Green, Executive Secretariat, IMDCC, Marine Debris Program; Phone 240-533-0399; Email [yael.seid-green@noaa.gov](mailto:yael.seid-green@noaa.gov) or visit the IMDCC website at <https://marinedebris.noaa.gov/our-work/IMDCC>.

**SUPPLEMENTARY INFORMATION:** The IMDCC is a multi-agency body responsible for coordinating a comprehensive program of marine debris research and activities among Federal agencies, in cooperation and coordination with non-governmental organizations, industry, academia, States, Tribes, and other nations, as appropriate. Representatives meet to share information, assess and promote best management practices, and coordinate the Federal Government's efforts to address marine debris.

The Marine Debris Act establishes the IMDCC (33 U.S.C. 1954). The IMDCC submits biennial progress reports to Congress with updates on activities, achievements, strategies, and recommendations. NOAA serves as the Chairperson of the IMDCC.



The meeting will be open to public attendance on March 15, 2023, from 2 p.m. to 3 p.m. ET. There will not be a public comment period. The meeting will not be recorded.

#### Matters To Be Considered

The open meeting will include presentations from the Department of Energy, the National Science Foundation, and the U.S. Agency for International Development on their relevant marine debris-related activities. The agenda topics described are subject to change. The latest version of the agenda will be posted at <https://marinedebris.noaa.gov/our-work/IMDCC>.

#### Special Accommodations

The meeting is accessible to people with disabilities. Closed captioning will be available. Requests for other auxiliary aids should be directed to Ya'el Seid-Green, Executive Secretariat at [yael.seid-green@noaa.gov](mailto:yael.seid-green@noaa.gov) or 240-533-0399 by March 3, 2023.

#### Scott Lundgren,

*Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 2023-03658 Filed 2-21-23; 8:45 am]

BILLING CODE 3510-NK-P

### COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

#### Procurement List; Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to the Procurement List.

**SUMMARY:** This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**DATES:** Date added to and deleted from the Procurement List: February 28, 2023.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202-4149.

**FOR FURTHER INFORMATION CONTACT:** Michael R. Jurkowski, Telephone: (703) 785-6404, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

#### SUPPLEMENTARY INFORMATION:

##### Additions

On 12/9/2022, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of

proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51-2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) and service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

#### Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) and service(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the product(s) and service(s) proposed for addition to the Procurement List.

#### End of Certification

Accordingly, the following service(s) are added to the Procurement List:

##### Service(s)

*Service Type:* Patient Access and Referral Accountability Service

*Mandatory for:* U.S. Air Force, Colorado Military Health System, Colorado Springs, CO

*Designated Source of Supply:* Global Connections to Employment, Inc., Pensacola, FL

*Contracting Activity:* DEPT OF THE AIR FORCE, FA7000 10 CONS LGC

The Committee finds good cause to dispense with the 30-day delay in the effective date normally required by the Administrative Procedure Act. See 5 U.S.C. 553(d). This addition to the Committee's Procurement List is effectuated because of the expiration of the Department of the Air Force, Patient Access and Referral Accountability Services, USAF, CMHS, Colorado Springs, CO contract. The Federal customer contacted and has worked diligently with the AbilityOne Program to fulfill this service need under the

AbilityOne Program. To avoid performance disruption, and the possibility that the Department of the Air Force will refer its business elsewhere, this addition must be effective on February 28, 2023, ensuring timely execution for a March 1, 2023 start date while still allowing 6 days for comment. The Committee also published a notice of proposed Procurement List addition in the **Federal Register** on December 9, 2022 and did not receive any comments from any interested persons. This addition will not create a public hardship and has limited effect on the public at large, but, rather, will create new jobs for other affected parties—people with significant disabilities in the AbilityOne program who otherwise face challenges locating employment. Moreover, this addition will enable Federal customer operations to continue without interruption.

**Michael R. Jurkowski,**

*Acting Director, Business Operations.*

[FR Doc. 2023-03665 Filed 2-21-23; 8:45 am]

BILLING CODE 6353-01-P

### DEPARTMENT OF DEFENSE

#### Office of the Secretary

#### Department of Defense Science and Technology Reinvention Laboratory Personnel Demonstration Project Program

**AGENCY:** The Under Secretary of Defense for Research and Engineering (USD(R&E)), Department of Defense (DoD).

**ACTION:** This notice provides new student and recent graduate direct hire authority to all Science and Technology Reinvention Laboratories (STRL) with published Personnel Demonstration (Demo) Project plans.

**SUMMARY:** STRLs may implement a direct hire authority for students and recent graduates for occupations which do not require expertise in science, technology, engineering, or mathematics (STEM). The Professional, Administrative, Assistant, Clerical and Technician Student Employment Program (PACTSEP) is a student program which permits appointment and noncompetitive conversion to the competitive service for qualified candidates who are enrolled in a qualifying educational institution.

**DATES:** Implementation of this **Federal Register** Notice (FRN) will begin no earlier than February 22, 2023.

**FOR FURTHER INFORMATION CONTACT:**

*Department of Defense:*

Office of Under Secretary of Defense (Research and Engineering), Defense Research Operations: Dr. James “Ben” Petro, 571–372–6435, *James.B.Petro.civ@mail.mil*.

*Department of the Air Force:*

- Air Force Research Laboratory: Ms. Rosalyn Jones-Byrd, 937–656–9747, *Rosalyn.Jones-Byrd@us.af.mil*.

- Joint Warfare Analysis Center: Ms. Amy Balmaz, 540–653–8598, *Amy.T.Balmaz.civ@mail.mil*.

*Department of the Army:*

- Army Futures Command: Ms. Marlow Richmond, 830–469–2057, *Marlowe.Richmond.civ@army.mil*.

- Army Research Institute for the Behavioral and Social Sciences: Dr. Scott Shadrack, 254–288–3800, *Scottie.B.Shadrack.civ@army.mil*.

- Combat Capabilities Development Command Armaments Center: Mr. Mike Nicotra, 973–724–7764, *Michael.J.Nicotra.civ@mail.mil*.

- Combat Capabilities Development Command Army Research Laboratory: Mr. Christopher Tahaney, 410–278–9069, *Christopher.S.Tahaney.civ@army.mil*.

- Combat Capabilities Development Command Aviation and Missile Center: Ms. Nancy Salmon, 256–876–9647, *Nancy.C.Salmon2.civ@army.mil*.

- Combat Capabilities Development Command Chemical Biological Center: Ms. Patricia Milwicz, 410–417–2343, *Patricia.L.Milwicz.civ@army.mil*.

- Combat Capabilities Development Command Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance Center: Ms. Angela Clybourn, 443–395–2110, *Angela.M.Clyborn.civ@army.mil*.

- Combat Capabilities Development Command Ground Vehicle Systems Center: Ms. Jennifer Davis, 586–306–4166, *Jennifer.L.Davis1.civ@army.mil*.

- Combat Capabilities Development Command Soldier Center: Ms. Sandra Rosenau, 508–206–3421, *Louise.S.Rosenau.civ@army.mil*.

- Engineer Research and Development Center: Ms. Patricia Sullivan, 601–634–3065, *Patricia.M.Sullivan@usace.army.mil*.

- Medical Research and Development Command: Ms. Linda Krout, 301–619–7276, *Linda.J.Krout.civ@mail.mil*.

- Technical Center, Space and Missile Defense Command: Dr. Chad Marshall, 256–955–5697, *Chad.J.Marshall.civ@army.mil*.

*Department of the Navy:*

- Naval Air Warfare Center, Weapons Division and Aircraft Division: Mr. Richard Cracraft, 760–939–8115, *Richard.A.Cracraft2.civ@us.navy.mil*.

- Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center: Ms. Lori Leigh, 805–901–5917, *Lori.A.Leigh@us.navy.mil*.

- Naval Information Warfare Centers:
  - Naval Information Warfare Center Atlantic: Mr. Michael Gagnon, 843–218–3871, *Michael.L.Gagnon2.civ@us.navy.mil*.

- Naval Information Warfare Center Pacific: Ms. Angela Hanson, 619–553–0833, *Angela.Y.Hanson.civ@us.navy.mil*.

- Naval Medical Research Center: Dr. Jill Phan, 301–319–7645, *Jill.C.Phan.civ@mail.mil*.

- Naval Research Laboratory: Ms. Ginger Kisamore, 202–767–3792, *Ginger.Kisamore@nrl.navy.mil*.

- Naval Sea Systems Command Warfare Centers: Ms. Diane Brown, 215–897–1619, *Diane.J.Brown.civ@us.navy.mil*.

- Office of Naval Research: Ms. Margaret J. Mitchell, 703–588–2364, *Margaret.J.Mitchell@navy.mil*.

**SUPPLEMENTARY INFORMATION:** STRLs may appoint students to flexible length and renewable student terms or temporary appointments and may appoint recent graduates to temporary, term, or permanent appointments without regard to subchapter I of chapter 33 of title 5 United States Code (U.S.C.) (other than sections 3303 and 3328). This direct hire authority is similar to the student direct hire authority in 10 U.S.C. 4091, as implemented in the STEM Student Employment Program (SSEP) published in 82 FR 29280, except it is for students seeking employment in professional, administrative, assistant, clerical, and technician positions.

## 1. Background

As authorized by 10 U.S.C. 4121, the Secretary of Defense, through the USD(R&E), may conduct personnel demonstration projects at DoD laboratories designated as STRLs. STRLs implementing this flexibility must have an approved personnel management demonstration project plan published in a FRN and must fulfill any collective bargaining obligations. Each STRL will establish internal operating procedures (IOPs) as appropriate.

The 21 current STRLs are:

- Air Force Research Laboratory
- Joint Warfare Analysis Center
- Army Futures Command
- Army Research Institute for the Behavioral and Social Sciences
- Combat Capabilities Development Command Armaments Center
- Combat Capabilities Development Command Army Research Laboratory

- Combat Capabilities Development Command Aviation and Missile Center
- Combat Capabilities Development Command Chemical Biological Center
- Combat Capabilities Development Command Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance, and Reconnaissance Center
- Combat Capabilities Development Command Ground Vehicle Systems Center
- Combat Capabilities Development Command Soldier Center
- Engineer Research and Development Center
- Medical Research and Development Command
- Technical Center, US Army Space and Missile Defense Command
- Naval Air Systems Command Warfare Centers
- Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center
- Naval Information Warfare Centers, Atlantic and Pacific
- Naval Medical Research Center
- Naval Research Laboratory
- Naval Sea Systems Command Warfare Centers
- Office of Naval Research

## 2. Summary of Comments

On October 17, 2022, the DoD published a notice (87 FR 62795–62800) concerning this new flexibility, for a 30-day public comment period. The public comment period ended on November 16, 2022. Comments were received from two commenters posing questions related to the conversion of program participants to General Schedule (GS) positions, promotion eligibility of program participants, and the terms used to describe the appointments available to program participants. Specifically, one commenter inquired how pay will be set for a PAACTSEP program participant who later converts from a pay band position to a GS position. In response, the Department notes that conversion procedures for personnel participating in an STRL Demo project are specific to each STRL and are published in the STRL’s Demo project plan. Another commenter recommended the following: providing criteria to determine whether experience is equivalent to education; providing criteria for promotion eligibility; and making the Flexible Length and Renewable Student Term appointment indefinite, consistent with the appointment created in 82 FR 29280. In response, the Department notes that the procedures for setting qualification and promotion eligibility

criteria are specific to STRL Demo project plans which use varying broadband and other classification schedules. As indicated in this notice, detailed program implementing procedures will be provided in individual STRL IOPs. In addition, the Department notes that, in a minor modification to 82 FR 29280 adopted in April 2020, the Department no longer makes indefinite appointments for the SSEP. Rather, consistent with the language in this PAACTSEP notice, SSEP appointments may not exceed a period of six years, may be renewed, and will not continue longer than 120 days after completion of the designated academic course of study unless the human resources office has received a Request for Personnel Action (SF-52) for noncompetitive conversion to a temporary, term or permanent position.

### 3. Overview

#### I. Introduction

##### A. Purpose

In addition to leveraging existing student and recent graduate hiring flexibilities to pursue scientific and engineering (S&E) talent, STRLs may implement additional flexibilities to recruit for other occupations, to include professional, administrative, and technical occupations, in order to support, maintain and advance each STRL's technologies and mission.

The purpose of this direct-hire authority is to create a streamlined and accelerated hiring and appointment process to access a pipeline of high-quality students and recent graduates and successfully compete with private industry when filling STRL professional, administrative, assistant, clerical, and technician positions.

To effectively implement PAACTSEP this FRN:

1. Establishes a student program which aligns students appointed under this authority to a pay band or grade commensurate with education and experience.

2. Applies the flexible length and renewable student term appointment authority in 82 FR 29280 for SSEP students to PAACTSEP students appointed for a period of at least one year. This flexible length and renewable student term appointment may be for a period of more than one year but not more than six years and may be extended in up to six-year increments. This authority provides a mechanism for students appointed under PAACTSEP to remain on a term appointment until completion of their educational program.

3. Establishes a temporary appointment authority for PAACTSEP students or recent graduates appointed for less than one year.

4. Establishes a student bonus authority designed to improve competitiveness with private industry in recruiting and retaining high caliber students. The bonus may be used to compensate PAACTSEP students for expenses related to program participation, to include, but not limited to, travel expenses when the worksite is in a different geographic location than that of the student's academic institution. STRLs also have authority to pay relocation expenses each time the student returns to duty at the laboratory.

##### B. Required Waivers to Law and Regulation

Waivers and adaptations of certain title 5 U.S.C. and 5 Code of Federal Regulations (CFR) provisions are required only to the extent that these statutory and regulatory provisions limit or are inconsistent with the actions authorized under these demonstration projects. Nothing in this plan is intended to preclude the STRLs from adopting or incorporating any law or regulation enacted, adopted, or amended after the effective date of this notice.

##### C. Expected Benefits

This direct-hire authority and student program is expected to streamline the hiring of high-quality students to enable the STRLs to compete with private industry in recruiting and retaining recent graduates. This program covers students enrolled in qualifying educational institutions and certificate programs, as those terms are defined in 5 CFR 362.102. This competitive service direct-hire and noncompetitive conversion authority enhances the ability of STRLs to compete with private industry by improving recruiting efforts, providing clear career paths, and offering career progression opportunities for a large and diverse population of students and recent graduates who may not otherwise consider joining the STRL workforce.

##### D. Participating Organizations and Employees

All DoD laboratories designated as STRLs pursuant to 10 U.S.C. 4121, with approved personnel demonstration project plans published in FRNs may use the provisions described in this FRN after the fulfillment of any collective bargaining obligations.

## II. Personnel System Changes

### A. Authority

STRLs may use the direct-hire authority to appoint students enrolled in qualifying educational institutions and certificate programs, as those terms are defined in 5 CFR 362.102. During each calendar year, each STRL may use this authority to appoint no more than 25 percent of the total number of non-STEM professional, administrative, assistant, clerical, and technician positions within the STRL that are filled at the close of the previous fiscal year. STRLs may appoint students to temporary or flexible length and renewable student term appointments in the competitive service and may appoint recent graduates to temporary, term, or permanent appointments in the competitive service. STRLs may provide eligible students noncompetitive conversion to term or permanent positions upon satisfaction of the graduation or certification requirements of the secondary or post-secondary educational institution and qualification requirements established by the Office of Personnel Management (OPM) for the position.

### B. Definitions

1. STRL PAACTSEP positions are those non-STEM professional, administrative, assistant, clerical, and technician positions described in STRL IOPs, to include General Schedule positions.

2. As provided in 5 CFR 362.102, the following secondary and post-secondary educational institutions are a "qualifying educational institution":

- (a) A public high school whose curriculum has been approved by a State or local governing body, a private school that provides secondary education as determined under State law, or a homeschool that is allowed to operate in a State; and

- (b) Any of the following educational institutions or curricula that have been accredited by an accrediting body recognized by the Secretary of the U.S. Department of Education:

- (i) A technical or vocational school;
- (ii) A 2-year or 4-year college or university;
- (iii) A graduate or professional school (e.g., law school, medical school); or
- (iv) A post-secondary homeschool curriculum.

3. Qualified candidates are defined as:

- (a) Students who are enrolled in a qualifying educational institution or a certificate program as defined by 5 CFR 362.102. The qualifications in Appendix C will apply to PAACTSEP appointments. Appointments may be at

the highest grade or pay band for which the participant is qualified. Promotion requirements will be published in STRL IOPs.

(b) Recent graduates are those individuals who have completed the graduation requirements of a qualifying educational institution or the certification requirements of a certificate program as defined in 5 CFR 362.102.

4. "Employee" is defined by 5 U.S.C. 2105.

### C. Provisions

1. Announcement and Assessment Process. Public notice is not required; however, if posting job opportunity announcements or advertisements, STRLs will ensure announcements and advertisements are concise and easily understood. If STRLs choose to advertise, the STRL IOPs will contain procedures for advertising positions pursuant to this authority in a manner that is most likely to provide diverse and qualified candidates and ensure potential applicants have appropriate information relevant to the positions available. Procedures must be consistent with merit system principles.

Candidates will be assessed against job-related criteria, ensuring that applicants have the skills and behavioral attributes that lead to success in the position. Selectees for entry level positions requiring the Administrative Careers With America (ACWA) assessment must be assessed using the most recent, streamlined ACWA examination or a validated alternative assessment instrument (e.g., select USA HIRE assessments).

#### 2. Appointments and Conversions.

##### (a) Students.

(1) Students may be initially appointed to pay banded or one- or two-grade interval positions for which they qualify in order to prepare them for conversion to the target position in a related pay band level or grade and occupational series upon completion of their academic degree or certificate program. Students being converted to positions requiring the ACWA assessment must be assessed as described in paragraph 3.II.C.1.

(2) Students may be appointed to temporary or flexible length and renewable student term positions.

##### a. Temporary Appointment.

Temporary appointments are typically used for short-term use (e.g., summer employment), however, temporary appointments may be made for up to one year and may be extended provided the criteria for the student appointment continues to be met.

b. Flexible Length and Renewable Student Term Appointment. The

flexible length and renewable student term appointment authorized in 82 FR 29280 will be utilized for PAACTSEP students appointed for a period of at least one year but not more than six years. The appointment may be extended in up to six-year increments, and for the purposes of the PAACTSEP will expire 120 days after completion of the designated certificate program or academic course of study, unless the human resources office has been notified of the STRL's plan to noncompetitively convert the student to a new term or permanent position or to terminate the student. The eligibility criteria for the student appointment must continue to be met for the duration of the appointment. The duration of a PAACTSEP flexible length and renewable student term appointment is considered a trial period.

(3) Promotion. Students may be promoted while serving on the flexible length and renewable student term appointment to a higher grade/pay band level provided the student meets the program and qualification requirements for the position. Students may not be promoted while serving on a temporary appointment but may be converted to a new appointment at a higher grade/pay band level provided the student meets the qualification requirements for the higher grade/pay band position. Promotion requirements will be published in STRL IOPs.

(4) Qualified candidates may be appointed to STRL PAACTSEP positions without regard to the provisions of subchapter I of 5 U.S.C. chapter 33 (other than sections 3303 and 3328). The provisions of the career transition assistance programs in subparts B, F, and G of 5 CFR part 330 do not apply.

(5) When documenting personnel actions for PAACTSEP students, cite the first LAC/legal authority as Z2U/10 U.S.C. 4121 if appointing to pay band positions. Also cite LAC/legal authority Z5C/Direct-Hire Auth (STRL–PAACTSEP Students). If appointing to General Schedule, cite the first LAC/legal authority as Z5C/Direct-Hire Auth (STRL–PAACTSEP Students).

(b) Noncompetitive Conversion to Non-Student Appointment. PAACTSEP students on temporary or flexible length and renewable student term appointments may be noncompetitively converted to a term or permanent appointment upon program certification or graduation from the applicable institution of higher learning, provided the student meets all eligibility criteria and OPM qualification requirements for the position.

(1) The conversion request must be submitted to the human resources office within 120 days of completion of all degree requirements, but before the time-limited appointment expires.

(2) The provisions of the career transition assistance programs in subparts B, F, and G of 5 CFR part 330 do not apply to the noncompetitive conversions.

(3) When documenting personnel actions for noncompetitive conversions of PAACTSEP students to permanent or term appointments cite the first legal authority code (LAC)/legal authority as Z2U/10 U.S.C. 4121, if to a pay banded position. The second LAC/legal authority will be Z5C/Direct-Hire Auth (STRL–PAACTSEP Conv). If to General Schedule, cite the first LAC/legal authority as Z5C/Direct-Hire Auth (STRL–PAACTSEP Conv).

(c) Recent graduates. Recent graduates may be appointed directly to the pay band level or grade and occupational series for which they qualify.

(1) Recent graduate appointments may be made on a temporary, term, or permanent basis.

(2) Qualified candidates may be appointed to STRL competitive service positions without regard to the provisions of subchapter I of 5 U.S.C. chapter 33 (other than sections 3303 and 3328). The provisions of the career transition assistance programs in subparts B, F, and G of 5 CFR part 330 do not apply.

(3) To be eligible, applicants must apply within two years of degree or certification (except for veterans precluded from doing so due to their military service obligation, who have up to two years after release from military service, to apply).

(4) When documenting personnel actions for recent graduates, cite the first LAC/legal authority as Z2U/10 U.S.C. 4121 if appointing to pay band positions. The second LAC/legal authority will be Z5C/Direct-Hire Auth (STRL Recent Graduate). If to General Schedule, cite the first LAC/legal authority as Z5C/Direct-Hire Auth (STRL Recent Graduate).

3. Classification/Pay Bands/Career Tracks. STRLs will use their existing pay band/career track level(s) to accommodate students hired under the PAACTSEP authority. Specific details regarding student classification pay band/career track level(s) will be included in STRL IOPs.

4. Probationary Period. PAACTSEP students converted to permanent, competitive service positions in a similar line of work without a break in service, may have time spent in the student program credited toward

probationary period completion in accordance with 5 CFR 315.802, or an approved STRL Lab Demo extended probationary period requirement. STRL recent graduates will serve a probationary period in accordance with 5 CFR 315.802, or an approved STRL Lab Demo extended probationary period.

5. Career Tenure. Time spent under flexible length and renewable student term appointments counts toward career tenure. Time spent under a temporary appointment is not counted toward career tenure unless the student was converted from a temporary appointment to a flexible length and renewable student term appointment without a break in service of three days and was subsequently converted to a permanent position.

6. Recruitment and Pay Flexibilities.  
(a) Tuition Assistance.

(1) Students may be eligible for tuition assistance. At the STRL Director's discretion, a student may be required to sign a written service agreement to continue in service for a period of up to three times the length of the time spent in training prior to accepting tuition assistance. The requirement for the length of the service obligation will be included in STRL IOPs.

(2) A student who is eligible to continue employment for the duration of the obligated service and who does not fulfill the service obligation may be required to provide repayment pursuant to 5 CFR 410.309(c).

(3) Expenses of training. PAACTSEP students may be paid travel expenses in the form of a student bonus or relocation incentive when the worksite is in a different geographic location than that of the student's academic institution. Pursuant to 5 U.S.C. 4109(a)(2), these expenses are considered training expenses and may be paid each time the student returns to duty to the STRL. Procedures for paying these expenses shall be documented in STRL IOPs.

(b) Pay Flexibilities.

(1) STRLs may use any applicable pay flexibility (e.g., recruitment, relocation, and retention incentives under 5 CFR part 575; student loan repayments under 5 CFR part 537 and 82 FR 78829; superior qualifications and special needs pay setting authority; maximum payable rate rule under 5 CFR part 531, subpart B; or demonstration project pay and bonus flexibilities). Procedures for

paying these flexibilities shall be documented in STRL IOPs.

(2) Relocation Expenses. PAACTSEP students may receive a relocation incentive under 5 CFR part 575 to help with relocation expenses. The authority to pay relocation expenses is expanded to allow an STRL to pay a relocation incentive each time the student returns to duty at the laboratory. This authority applies to all PAACTSEP student positions in the STRLs and provides the ability to expand recruitment to top universities and incentivize mobility by paying additional expenses to students who accept employment outside of their geographic area. A relocation incentive may be paid when the worksite is in a different geographic location than that of the student's college and is intended to cover some or all the student's living expenses while working in the STRL. Procedures for paying these incentives shall be documented in STRL IOPs.

(3) Student bonus. A student bonus may be used to compensate PAACTSEP students without the requirement for a continuing service agreement as determined by the STRL. PAACTSEP students may be granted a student bonus for expenses related to PAACTSEP participation to include, but not limited to, travel expenses when the worksite is in a different geographic location than that of the student's academic institution. The student bonus is not part of basic pay. STRLs may pay the student bonus each time the student returns to duty at the laboratory. The use of this bonus will help to improve the STRLs competitiveness with private industry in recruiting and retaining high caliber students.

*D. Personnel Considerations*

1. Work Schedules. STRLs may impose limitations on the number of hours a PAACTSEP student can work per week that are more restrictive than applicable laws and regulations governing overtime and hours of work. Supervisors and students should agree on a work schedule that does not interfere with the academic schedule and that supports timely completion of the educational program.

2. Break in Program. STRL directors may authorize PAACTSEP participation by students who are not attending classes at a qualifying educational institution or certificate program for a period of 120 days. The approval authority and criteria will be described in STRL IOPs.

3. Service Agreement. STRL IOPs will describe any service agreement requirement for students and recent graduates hired under this authority.

4. Training and Development. STRL IOPs will describe the training and development of students and recent graduates hired under this authority.

5. Performance evaluation. STRL IOPs will describe performance requirements and performance evaluations for students and recent graduates hired under this authority.

6. Extension/Termination of appointment. Temporary appointments expire upon the not-to-exceed date, unless extended. Flexible length and renewable student term appointments for PAACTSEP students will not exceed six year increments but will expire 120 days after completion of the designated academic course of study, unless the human resources office has been notified that the student will be noncompetitively converted to a permanent or term position as described in paragraph 3.II.C.2. Flexible length and renewable student term appointments may be extended if the individual continues to meet the definition of a "student" (i.e., enrolled in a qualifying academic program) as identified in Section 3.II.B.3 and meet any academic requirements specified by the employing STRL. Students may be terminated for reasons including, but not limited to, mission requirements/budget constraints, misconduct, poor performance (including academic), or suitability.

In cases where the STRL Director does not plan to convert the student to a permanent or term appointment, the PAACTSEP appointment may be terminated less than 120 days after completion of the designated academic course of study, subject to any applicable requirements of 5 U.S.C. chapter 75.

*E. Evaluation*

Procedures for evaluating this authority will be incorporated into the STRL demonstration project evaluation processes conducted by the STRLs, OUSD(R&E), or military department headquarters, as appropriate.

*F. Reports*

STRLs will track and provide information and data on the use of this authority when requested by the military department headquarters or OUSD(R&E).

## APPENDIX A—WAIVERS TO TITLE 5, U.S.C. AND TITLE 5 CFR

Title 5, United States Code	Title 5, Code of Federal Regulations
Subchapter I of chapter 33 of title 5 U.S.C. (other than sections 3303 and 3328).	5 CFR 300–330, other than Subpart G of 300. Waived to the extent necessary to allow provisions of the direct hire authorities as described in this FRN.
5 U.S.C. 4108 (a)–(c)—Employee Agreements; Service after Training. Waived to allow: (1) the STRLs to determine if a service agreement is required and if so, to determine the period of required service for students employed under the Demo; (2) the Commanding Officer or the Laboratory STRL Director to waive in whole or in part a right of recovery; and (3) allow students to sign a service agreement up to three times the length of the training.	5 CFR part 316, subparts C–D—Waived to the extent necessary to allow provisions of the direct hire authorities as described in this FRN.
5 U.S.C. 5753—Recruitment and relocation bonuses. Waived to the extent necessary to allow those STRL scientific and engineering employees and positions to be treated as employees and positions under the General Schedule and to allow relocation incentives to be paid to PAACTSEP students whose worksite is in a different geographic location than that of the college in which enrolled each time they return to duty.	5 CFR 410.309—Waived to allow: (1) the STRLs to determine if a service agreement is required and if so, the period of required service for students employed under the demo; (2) the Commanding Officer or the STRL Director to waive in whole or in part a right of recovery; and (3) students to sign a service agreement up to three times the length of the training. 5 CFR part 575, subparts A and B—Recruitment and Relocation Incentives. Waived to the extent necessary to allow employees hired and positions under the PAACTSEP program to be treated as employees and positions under the General Schedule and to allow relocation incentives to be paid to PAACTSEP students whose worksite is in a different geographic location than that of the college in which enrolled each time they return to duty.

## APPENDIX B—AUTHORIZED STRLS AND FEDERAL REGISTER NOTICES

STRL	Federal Register Notice
Air Force Research Laboratory .....	61 FR 60400, as amended by 75 FR 53076.
Joint Warfare Analysis Center .....	85 FR 29414.
Army Futures Command .....	Not yet published.
Army Research Institute for Behavioral and Social Sciences .....	85 FR 76038.
Combat Capabilities Development Command Armaments Center .....	76 FR 3744.
Combat Capabilities Development Command Army Research Laboratory.	63 FR 10680.
Combat Capabilities Development Command Aviation and Missile Center.	62 FR 34906 and 62 FR 34876, as amended by 65 FR 53142 (AVRDEC and AMRDEC merged together).
Combat Capabilities Development Command Chemical Biological Center.	74 FR 68936.
Command, Control, Communications, Cyber, Intelligence, Surveillance, and Reconnaissance Center.	66 FR 54872.
Combat Capabilities Development Command Ground Vehicle Systems Center.	76 FR 12508.
Combat Capabilities Development Command Soldier Center .....	74 FR 68448.
Engineer Research and Development Center .....	63 FR 14580, as amended by 65 FR 32135.
Medical Research and Development Command .....	63 FR 10440.
Technical Center, US Army Space and Missile Defense Command .....	85 FR 3339.
Naval Air Systems Command Warfare Centers .....	76 FR 8530.
Naval Facilities Engineering Command Engineering and Expeditionary Warfare Center.	86 FR 14084.
Naval Information Warfare Centers, Atlantic and Pacific .....	76 FR 1924.
Naval Medical Research Center .....	Not yet published.
Naval Research Laboratory .....	64 FR 33970.
Naval Sea Systems Command Warfare Centers .....	62 FR 64050.
Office of Naval Research .....	75 FR 77380.

## Appendix C

## Qualification Standards for STRL PAACTSEP Student Trainee Positions

The following table shows the amount of education required to qualify for appointments for PAACTSEP student positions covered by this FRN. Note: Equivalent combinations of education and experience are qualifying for all

positions for which both education and experience are acceptable. Enrollment in an accredited academic institution is required. An academic year of undergraduate education is defined as 30 semester hours, 45-quarter hours, or the equivalent in an accredited college or university, or approximately 36 weeks for at least 20 classroom hours per week in an accredited business,

technical, or secretarial school. See the “General Policies and Instructions” for the Qualification Standards Operating Manual for the definition of a full year of graduate education.

*Requirements for STRL students in the Professional, Administrative, Assistant, Clerical, and Technician Student Employment Program):*

Grade level or pay band equivalent	Level of education
GS-01 or Pay Band Equivalent .....	Enrollment in a high school diploma or General Education Diploma (GED) program.
GS-02 or Pay Band Equivalent .....	Completion of high school or GED diploma.
GS-03 or Pay Band Equivalent .....	Completion of 1 full academic year of post-high school study.
GS-04 or Pay Band Equivalent .....	Completion of 2 full academic years of post-high school study or an associate's degree.
GS-05 or Pay Band Equivalent .....	Completion of 4 academic years of post-high school study leading to a bachelor's or equivalent degree.
GS-07 or Pay Band Equivalent .....	Completion of 1 full academic year of graduate level education; or Eligibility under the Superior Academic Achievement Provision and completion of a bachelor's degree.
GS-09 or Pay Band Equivalent .....	Completion of 2 academic years of graduate level education, or a master's degree or equivalent graduate degree.
GS-11 or Pay Band Equivalent .....	For research positions, completion of all requirements for a master's or equivalent graduate degree. For non-research positions, completion of all requirements for a PhD or equivalent degree.

Appointments may be at the highest grade or pay band for which the participant is qualified. One full academic year of undergraduate; graduate; technical or high school education is the number of credit hours determined by the college, university or school to represent one year of full-time study. The high school curriculum must be approved by a State or local governing body. All education beyond the high school level must be accredited by an accrediting body or organization recognized by the U.S. Department of Education.

#### *Special Provisions/or Students With Previous Related Education or Experience*

Previous education and/or experience may be evaluated to determine the highest grade Level or pay band for which the student is qualified.

Dated: February 15, 2023.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2023-03601 Filed 2-21-23; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### **Notice of Intent To Prepare a General Reevaluation Report/Supplemental Environmental Impact Statement for the Ala Wai Canal Flood Risk Management Study, Honolulu, HI**

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and pursuant to the Hawaii Revised Statutes (HRS)

Chapter 343 (Hawaii Environmental Policy Act (HEPA)), the Pittsburgh District, U.S. Army Corps of Engineers (Corps) is preparing a draft General Reevaluation Report/Supplemental Environmental Impact Statement (GRR/SEIS) to evaluate the opportunities to reduce the risk to life, safety and economic damages from flooding throughout the Ala Wai Watershed in Oahu, Hawaii. The Ala Wai Canal Flood Risk Management Study was authorized under Section 209 of the Flood Control Act of 1962. The study was completed in 2017 and resulted in a recommendation that was subsequently authorized for construction under Section 1401 of the Water Resources Development Act of 2018 (Authorized Project). The purpose of the GRR/SEIS is to reevaluate the Authorized Project and either confirm the Authorized Project or make a new recommendation that will include modifications to the Authorized Project. The non-Federal sponsor for this study is the City and County of Honolulu.

**DATES:** To ensure consideration, all comments concerning the scope of the GRR/SEIS, potential alternatives, and identification of relevant information and studies must be received by March 24, 2023.

**ADDRESSES:** You may submit comments related to the GRR/SEIS by any of the following methods:

- **Website:** <https://www.honolulu.gov/alawai/contact.html>.
- **Email:** [alawai@honolulu.gov](mailto:alawai@honolulu.gov).
- **Mail:** U.S. Army Corps of Engineers, Honolulu District, 230 Otake St. (Attn: POH-PPC, Ala Wai), Fort Shafter, HI 96858-5440.

**FOR FURTHER INFORMATION CONTACT:** For further information about this project, please visit <https://www.honolulu.gov/alawai>. You may also contact Shawna Herleth-King at 312-846-5407 or by

email at: [shawna.s.herleth-king@usace.army.mil](mailto:shawna.s.herleth-king@usace.army.mil).

#### **SUPPLEMENTARY INFORMATION:**

1. **Background:** The Corps-Honolulu District received the authority to conduct the Ala Wai Canal Flood Risk Management Study under Section 209 of the Flood Control Act of 1962 (Public Law 84-874). The feasibility study's recommended plan consisted of six in-stream debris and detention basins of varying height in the upper reaches of the watershed, one standalone debris catchment structure, three multi-purpose detention basins, floodwalls along the Ala Wai Canal averaging four feet in height and an earthen levee at the perimeter of an adjacent golf course averaging seven feet in height, two pump stations to reduce the threat of interior flooding, and a flood warning system. The feasibility study determined the technical, economic, environmental, and social feasibility of the recommended plan to reduce flood risk within the Ala Wai Canal watershed of Honolulu, Hawaii.

Section 1401 of the Water Resources Development Act of 2018 (Public Law 115-270) authorized construction of the Ala Wai Canal Flood Risk Management Project, as described in the Chief's Report, ([https://www.poh.usace.army.mil/Portals/10/docs/Civil%20Works%20Sponsor%20Letters/Tab%201%20Chiefs%20Report%20Ala%20Wai%20Chiefs%20Report%20SIGNED%20\(003\).pdf?ver=2018-09-14-171850-833](https://www.poh.usace.army.mil/Portals/10/docs/Civil%20Works%20Sponsor%20Letters/Tab%201%20Chiefs%20Report%20Ala%20Wai%20Chiefs%20Report%20SIGNED%20(003).pdf?ver=2018-09-14-171850-833)), dated December 21, 2017, and the *Ala Wai Canal Flood Risk Management Study, Oahu, Hawaii, Feasibility Study with Integrated Environmental Impact Statement*, dated May 2017. The **Federal Register** notice (82 FR 24325, May 26, 2017) for the EIS being supplemented is available at <https://www.govinfo.gov/content/pkg/FR-2017-05-26/pdf/2017-10719.pdf>. The record



of decision (ROD) was signed on September 18, 2018, initiating the next phase of the study, Preconstruction Engineering and Design (PED). In 2020, an Engineering Documentation Report (EDR) provided the technical basis for modifications necessary to the Authorized Project. Subsequent analysis found that the modifications in the 2020 EDR were not cost effective and lacked the economic justification necessary for continued federal involvement. Acknowledging the need to reduce the risk to life, safety and economic damages from flooding throughout the Ala Wai Watershed in Oahu, Hawaii, the Corps is currently reevaluating the previously completed Ala Wai Canal Flood Risk Management Study in a GRR, using current planning criteria and policies. Since the GRR is reevaluating alternatives and could result in a new recommendation, NEPA documentation for the Ala Wai Canal Flood Risk Management Project will be updated.

2. *Proposed Action:* The project is undergoing a GRR to (1) redefine the flood problems and risks in the Ala Wai Watershed by updating hydrology, physical, biological, and socioeconomic conditions; (2) reevaluate alternatives for reducing flood damages in the area; and (3) reaffirm the Federal interest by recommending a plan that is economically feasible. The results of this study will be presented in the GRR/SEIS. The formulation and evaluation of alternatives, benefits and costs, and implementation requirements will be presented in the GRR/SEIS.

3. *Alternatives:* A number of project alternatives will be evaluated in the GRR/SEIS. In addition to the No Action alternative, other potential alternatives to reduce flood damages include a combination of the following components: Makiki District Park detention basin, Manoa Valley District Park detention basin, Ala Wai Golf Course detention basin, Kaimuki High School berm/floodwall, Kanaha floodwall, Woodlawn Bridge floodwall, Koali Road floodwall, and Ala Wai Canal floodwall.

4. *Scoping/Public Participation:* The GRR/SEIS will be coordinated with Federal, State, and local government agencies; Native Hawaiian organizations; local stakeholders; special interest groups; and any other interested individuals and organizations. A 30-day scoping period for Federal, State, local agencies, and non-governmental organizations was held between August 9, 2021, through September 9, 2021, when the environmental document accompanying the GRR was anticipated to be a supplemental environmental

assessment. The Corps held a public meeting to discuss the scope of the draft GRR and accompanying environmental documentation on November 10 and November 13, 2021. The virtual meeting dates and times were advertised in advance on the City and County of Honolulu's Ala Wai Study Flood Risk Management website (<https://www.honolulu.gov/alawai/public-engagement.html>). The purpose of these meetings was to involve local stakeholders and the public early in the study process. The meetings collected public input regarding the study scope, historic and current problems, and potential opportunities. Based on public feedback, additional virtual workshops/meetings were incorporated into the public engagement strategy for the study. To date, additional public engagement opportunities have occurred via virtual and/or in-person workshops/meetings held on January 20, 2022, April 1, 2022, April 8, 2022, April 14, 2022, April 22, 2022, July 26, 2022, July 28, 2022, and December 13, 2022.

Based on feedback from the public and the non-Federal sponsor, the environmental document being prepared to accompany the GRR is now anticipated to be a SEIS. Therefore, this notice of intent to prepare a GRR/SEIS is initiating a new 30-day public scoping period. Due to public workshops and meetings that have already occurred, no additional scoping meetings are planned at this time. All public comments received to date regarding the GRR/SEIS, either verbally or in writing, during prior meetings, workshops, and scoping periods will be considered by the Corps in the GRR/SEIS.

5. *Anticipated Impacts, Permits, and Authorization:* The GRR/SEIS will analyze the full range of impacts, both beneficial and negative, of the alternatives. Potentially significant issues to be analyzed include impacts to water quality, biological resources, endangered and threatened species and their habitats, cultural resources, and visual resources. Other impacts that will be analyzed include geology, seismicity, and soils; surface water resources; hydrology and hydraulics; land use; recreation; hazardous and toxic waste; air quality; noise; traffic and transportation; public health and safety; public services and utilities; socioeconomic; and environmental justice. Anticipated permits and authorizations include water quality certification and Coastal Zone Consistency Determination. In addition, many other Federal, State, and local authorizations will be required for the

Project. Applicable Federal laws include NEPA, the Endangered Species Act, Fish and Wildlife Coordination Act, Magnuson-Stevens Fishery Conservation and Management Act, Marine Mammal Protection Act, Coastal Zone Management Act, National Historic Preservation Act, and the Clean Water Act.

6. *Public Comment Availability:* Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record. Comments submitted anonymously will be accepted and considered. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

7. *Study Schedule:* The Draft GRR/SEIS is currently estimated to be available to the public in Summer 2023, with a 45-day public review and comment period following release of the draft document.

**Kimberly A. Peeples,**  
*Brigadier General, U.S. Army, Commander,  
Great Lakes and Ohio River Division.*

[FR Doc. 2023-03622 Filed 2-21-23; 8:45 am]

**BILLING CODE 3720-58-P**

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## DEPARTMENT OF EDUCATION

[Docket ID ED-2023-OPE-0029]

### Request for Information Regarding First Amendment and Free Inquiry Related Grant Conditions

**AGENCY:** Office of Postsecondary Education, U.S. Department of Education

**ACTION:** Request for information.

**SUMMARY:** The U.S. Department of Education (Department) is requesting information in the form of written comments that may include information, research, and other input from the public on how regulations adding material conditions relating to First Amendment freedoms and free inquiry to Department grants have affected or are reasonably expected to affect decisions surrounding First Amendment and free speech-related litigation in Federal and State court and institutional policies on freedom of speech. The Office of Postsecondary



Education solicits these comments to inform its review of the current regulations and its implementation of applicable grant programs.

**DATES:** We must receive your comments on or before March 24, 2023.

**ADDRESSES:** Comments must be submitted via the Federal eRulemaking Portal at [regulations.gov](https://www.regulations.gov). However, if you require an accommodation or cannot otherwise submit your comments via [regulations.gov](https://www.regulations.gov), please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments by fax or by email, or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

*Federal eRulemaking Portal:* Go to [www.regulations.gov](https://www.regulations.gov) to submit your comments electronically. Information on [sing Regulations.gov](https://www.regulations.gov), including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “FAQ.”

*Privacy Note:* The Department’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at [www.regulations.gov](https://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

This is a request for information (RFI) only. This RFI is not a request for proposals (RFP) or a promise to issue an RFP or a notice of proposed rulemaking. This RFI does not commit the Department to contract for any supply or service whatsoever. Further, we are not seeking proposals and will not accept unsolicited proposals. The Department will not pay for any information or administrative costs that you may incur in responding to this RFI. The documents and information submitted in response to this RFI become the property of the U.S. Government and will not be returned.

**FOR FURTHER INFORMATION CONTACT:** Ashley Clark, U.S. Department of Education, 400 Maryland Ave. SW, Room 2C185, Washington, DC 20202. Telephone: (202) 453-7977. Email: [ashley.clark@ed.gov](mailto:ashley.clark@ed.gov).

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In 2020, the Department proposed and issued final regulations to add material conditions relating to First Amendment freedoms and free inquiry to certain Department grants. These regulations, commonly referred to as the “Free Inquiry Rule,” added provisions related to free inquiry (§ 75.500(b) and (c) for Direct Grant Programs, and § 76.500(b) and (c) for State-Administered Formula Grant Programs), making it a material condition of these Department grants that public institutions of higher education (IHEs) that receive these grants comply with the First Amendment and private institutions that receive grants from the Department follow their stated institutional policies on freedom of speech, including academic freedom. As acknowledged in the 2020 final rule, public IHEs are already legally required to comply with the First Amendment and private IHEs are required to comply with their stated policies on freedom of speech. The intended effect of making compliance a material condition of receiving Department grants is to encourage IHEs to foster environments that promote open, intellectually engaging, and diverse debate.

The 2020 final rule states that an IHE will be determined to have violated the grant conditions in §§ 75.500(b) and (c) and 76.500(b) and (c) only if a State or Federal court issues a final, non-default judgment against a public IHE for violating the First Amendment or against a private IHE for violating stated institutional policies. In the 2020 NPRM and 2020 final rule, the Department stated that we believed State and Federal courts are the appropriate arbiters of alleged free speech violations. Under the 2020 final rule, the Department’s role is deciding whether and to what extent to impose additional penalties where such court judgments have been rendered, including, but not limited to, withholding Federal grant funding. The preamble to the 2020 final rule stated that if a court issues such a judgment against a public IHE for violating the First Amendment or a private IHE for violating stated institutional policies, the institution must submit to the Secretary a copy of the judgment within 45 days. The Department would then consider such a grantee to be in violation of a material condition and could pursue available remedies for noncompliance.

Furthermore, the 2020 final rule added a third provision (§ 75.500(d) for Direct Grant Programs and § 76.500(d) for State-Administered Formula Grant

Programs) prohibiting public IHEs from denying to a religious student organization at the public institution any right, benefit, or privilege that is otherwise afforded to other student organizations at the institution because of the religious student organization’s beliefs, practices, policies, speech, membership standards, or leadership standards informed by sincerely held religious beliefs. That provision is not part of this request for information and is instead being addressed separately in a notice of proposed rulemaking (see Docket ID ED–2022–OPE–0157).

## II. Review of 34 CFR 75.500 and 76.500, Paragraphs (b) and (c)

On August 19, 2021, the Department issued a blog post announcing that we were conducting a review of these regulations while keeping in mind the importance of several key elements, including First Amendment protections, nondiscrimination requirements, and the promotion of inclusive learning environments for all students.<sup>1</sup> We stated in our blog post that the First Amendment requires that public colleges and universities not infringe upon students’ rights to engage in protected free speech and religious exercise and emphasized our long-held and continuing view that “[p]rotecting First Amendment freedoms on public university and college campuses is essential.” The Department further recognized that IHEs, their students, and the courts have historically been responsible for resolving disputes relating to these complex matters where these important principles intersect.

As part of the review, the Department conducted outreach and held meetings with higher education and institutional stakeholders, including organizations representing minority-serving institutions and other under-resourced institutions; faith-based organizations, including organizations representing religious IHEs; and organizations that advocate for civil rights and civil liberties. The purpose of the meetings was to hear from impacted groups that had diverging perspectives in their comments on the proposed provisions in the 2020 NPRM. Some institutional stakeholders raised on-going concerns that the provisions added by the 2020 final rule in paragraphs (b) and (c) of 34 CFR 75.500 and 76.500 unnecessarily go beyond what is required by the courts, encourage campus community members to pursue litigation more frequently, and

<sup>1</sup> Cooper, Michelle Asha. “Update on the Free Inquiry Rule,” Department of Education Homeroom Blog (Aug. 19, 2021), <https://blog.ed.gov/2021/08/update-on-the-free-inquiry-rule/>.

undermine existing campus processes. Stakeholders also stated that these provisions could increase institutional costs as a result of increased litigation and prompt institutions to change their approach to litigation, such as being more likely to settle. In the case of private institutions, the Department has heard concerns that the regulations may incentivize private colleges to limit, eliminate, or reconsider their policies on free speech for fear of losing grant funds. Some stakeholders indicated support for these provisions and stated that the regulation helps secure crucial civil liberties under the First Amendment.

### III. Solicitation of Comments: Impact of 34 CFR 75.500 and 76.500, Paragraphs (b) and (c)

The Biden-Harris Administration deeply values the First Amendment, including its guarantees of free speech and free exercise. The Department is seeking input from the public on how the regulations have affected or are reasonably expected to affect decisions surrounding First Amendment and free speech-related litigation in Federal and State court and institutional policies on freedom of speech. The Department is interested in this public input to inform its review of the current regulations and its implementation of applicable grant programs. This effort is separate from any ongoing regulatory work. The deadline for these submissions is March 24, 2023.

The Department encourages comments from impacted institutions of higher education; researchers, academics, policy experts, and other individuals familiar with First Amendment rights and institutional policies; organizations that work on First Amendment issues, including those that work directly with institutions and students; students and other members of the public.

The Department seeks responses to the specific questions below, as well as the general concepts and topics identified as they relate to First Amendment rights and free speech policies on campus.

The Department invites comments as to:

1. Whether and how the current regulations have affected or are reasonably expected to affect decisions surrounding First Amendment and free speech-related litigation in Federal and State court;

2. How these regulations have affected or are reasonably expected to affect public IHEs' approach to designing institutional policies related to First Amendment protections, including on-

campuses processes used to address alleged free speech and academic freedom violations;

3. How these regulations have affected or are reasonably expected to affect private IHEs' approach to designing institutional policies related to free speech and academic freedom, including on-campus processes used to address alleged free speech and academic freedom violations;

4. Whether and how these grant conditions have provided additional protections of First Amendment rights in the case of public colleges, or promotion of free speech and free inquiry policies in the case of private institutions;

5. Whether these regulations affect or could be expected to affect how aggrieved campus community members seek resolution to alleged free speech and academic freedom policy violations;

6. Whether these regulations have resulted in additional quantifiable costs beyond what was considered in the 2020 final rule;

7. Any other information that the public believes would inform the Department's understanding of the impact of these regulations.

**Accessible Format:** On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotope, or compact disc, or other accessible format.

**Electronic Access to This Document:** The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit

your search to documents published by the Department.

**Nasser H. Paydar,**

*Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 2023-03671 Filed 2-21-23; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

[Docket No. ED-2023-SCC-0034]

### Agency Information Collection Activities; Comment Request; Measuring Educational Gain in the National Reporting System for Adult Education

**AGENCY:** Office of Career, Technical, and Adult Education (OCTAE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

**DATES:** Interested persons are invited to submit comments on or before April 24, 2023.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED-2023-SCC-0034. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the [www.regulations.gov](http://www.regulations.gov) site is not available to the public for any reason, the Department will temporarily accept comments at [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave SW, LBJ, Room 6W203, Washington, DC 20202-8240.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact John LeMaster, (202) 245-6218.

**SUPPLEMENTARY INFORMATION:** The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Measuring Educational Gain in the National Reporting System for Adult Education.

*OMB Control Number:* 1830-0567.

*Type of Review:* Extension without change of a currently approved ICR.

*Respondents/Affected Public:* Private Sector.

*Total Estimated Number of Annual Responses:* 15.

*Total Estimated Number of Annual Burden Hours:* 600.

*Abstract:* Title 34 of the Code of Federal Regulations part 462 establishes procedures the Secretary uses to consider literacy tests for use in the National Reporting System (NRS) for adult education. This information is used by the Secretary to determine the suitability of published literacy tests to measure and report educational gain under the NRS.

Dated: February 15, 2023.

**Juliana Pearson,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2023-03593 Filed 2-21-23; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF EDUCATION

### **Applications for New Awards; Educational Technology, Media, and Materials for Individuals With Disabilities—Center on Science, Technology, Engineering, and Mathematics for Young Children With Disabilities**

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department of Education (Department) is issuing a notice inviting applications for a new award for fiscal year (FY) 2023 for Educational Technology, Media, and Materials for Individuals with Disabilities—Center on Science, Technology, Engineering, and Mathematics for Young Children with Disabilities, Assistance Listing Number 84.327G. This notice relates to the approved information collection under OMB control number 1820-0028.

#### **DATES:**

*Deadline for Transmittal of Applications:* April 24, 2023.

*Deadline for Intergovernmental Review:* June 22, 2023.

*Pre-Application Webinar Information:* No later than February 27, 2023, the Office of Special Education Programs (OSEP) will post pre-recorded informational webinars designed to provide technical assistance (TA) to interested applicants. The webinars may be found at <https://www2.ed.gov/fund/grant/apply/osep/new-osep-grants.html>.

**ADDRESSES:** For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at [www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs](http://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs). Please note that these Common Instructions supersede the version published on December 27, 2021.

#### **FOR FURTHER INFORMATION CONTACT:**

Tracie Dickson, U.S. Department of Education, 400 Maryland Avenue SW, Room 5013, Potomac Center Plaza, Washington, DC 20202-5108. Telephone: (202) 245-7844. Email: [Tracie.Dickson@ed.gov](mailto:Tracie.Dickson@ed.gov).

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7-1-1.

## **SUPPLEMENTARY INFORMATION:**

### **Full Text of Announcement**

#### **I. Funding Opportunity Description**

*Purpose of Program:* The purpose of the Educational Technology, Media, and Materials for Individuals with Disabilities Program (ETechM2 Program) is to improve results for students with disabilities by: (1) promoting the development, demonstration, and use of technology; (2) supporting educational media activities designed to be of educational value in the classroom for students with disabilities; (3) providing support for captioning and video description that is appropriate for use in the classroom; and (4) providing accessible educational materials to students with disabilities in a timely manner.

*Priority:* This competition includes one absolute priority. In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 674(b)(2) and 681(d) of the Individuals with Disabilities Education Act (IDEA); 20 U.S.C. 1474(b)(2) and 1481(d)).

*Absolute Priority:* For FY 2023 and any subsequent year in which we make awards from the list of unfunded applications from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

*Center on Science, Technology, Engineering, and Mathematics for Young Children with Disabilities.*

*Background:*

One of the greatest joys of early learning is the amazing curiosity of infants, toddlers, and preschool children (young children). All young children are “little scientists” who make observations and conduct experiments to see what will happen as they play and engage with their environment and with each other. In fact, more than half of young children's natural playtime is spent on a science or mathematics-related activity (Head Start Early Childhood Learning and Knowledge Center, 2021a). For example, infants explore objects with their hands and mouth, learning about similarities and differences; during outdoor free play, preschoolers like to explore and naturally learn math concepts such as counting or sorting leaves and rocks. This sets the earliest foundation for school readiness (National Center on Early Childhood Development, Teaching, and Learning, 2021a), and allows young children to engage and communicate with others as they develop skills and learn new concepts.

Every child deserves equitable access to a culturally informed, inclusive, and high-quality education that integrates science, technology, engineering, and mathematics (STEM) throughout the daily curriculum to prepare them for school and potential future STEM career paths. STEM education that focuses on integrating arts into a STEM framework creates a multi-disciplinary, creative, and dynamic approach to learning STEM (Dell'Erba, 2019). Integrating art in STEM can include visual arts (concepts such as color, shape, line/angle, texture, and space), movement, dance, and music (Head Start Early Childhood Learning and Knowledge Center, 2021b). Integrating art within STEM is about using creativity and imagination to increase the development of STEM skills and concepts. An early introduction to STEM that integrates art builds foundational skills needed for later learning, including problem solving, creativity, inquiry skills, analytic skills, math and science skills, design thinking for engineering, critical thinking, and collaboration (National Center on Early Childhood Development, Teaching, and Learning, 2021b). Early STEM experiences that integrate art can promote future academic success as children who learn STEM concepts earlier are better prepared to meet increasingly technology-focused instruction later in their education (Linder & Eckhoff, 2020). In addition, the importance of early STEM experiences is supported by research studies (Purpura et al., 2017) that show early mathematics skills are the most consistently predictive measure of future academic success.

While STEM learning opportunities in the early years have been shown to be important for later learning, there are still many misconceptions about the importance of STEM learning for children with disabilities (Yang et al., 2022), including those who are multilingual and racially ethnically, and culturally diverse. As a result, such young children may lack access or adequate support to engage in STEM learning opportunities. Studies show that all young children can benefit from participating in early childhood settings that integrates art into teaching STEM concepts (Bucher & Pindra, 2020). Young children with disabilities may require specialized supports to engage in STEM learning to help them achieve developmental and educational outcomes under Parts C and B of the IDEA. Many STEM activities require children to use fine and gross motor skills to physically engage with objects,

have the mobility to participate in experiments, or use different senses to explore how something works. STEM activities also typically require children to ask questions, focus their attention and solve problems. Delays in achieving these developmental skills may pose challenges for some young children with disabilities to fully engage in STEM learning opportunities. Yet the hands-on approach and active engagement needed for STEM learning can be an ideal way for young children with disabilities to develop skills and achieve goals specified in their individualized family service plans (IFSPs) or individualized education programs (IEPs). Identifying best practices in providing STEM learning to young children with disabilities, including the supports needed to integrate these practices into daily routines and in inclusive settings, would help maximize their opportunities to achieve developmental and educational outcomes.

Young children who are multilingual and racially, ethnically, and culturally diverse also have less exposure to STEM learning opportunities (Science, Technology, Engineering and Math: Innovation for Inclusion in Early Education, 2023). Therefore, young children with disabilities who are multilingual and racially, ethnically, and culturally diverse are particularly at risk for not receiving the supports they need to fully engage in STEM learning opportunities. Culture influences the learning process, and the environment created should foster all young children's sense of belonging, purpose, and agency. Best practices in providing STEM learning opportunities, including using technology and art, need to be culturally and linguistically responsive. Additionally, supports need to be in place to help early childhood personnel understand, communicate with, and effectively interact with multilingual and racially, ethnically, and culturally diverse young children with disabilities and their families to successfully support developmental and learning outcomes in STEM.

Providing STEM opportunities for learning, including using technology and art, requires more than an awareness of individual STEM concepts. Early childhood personnel require an understanding of how best to create developmentally appropriate STEM learning opportunities using learning trajectories (Clements & Sarama, 2017/2019). Learning trajectories are based on the notion that young children follow natural developmental progressions in learning. Learning trajectories help early

childhood providers understand how young children develop mathematics understanding, for example, so they are more effective in questioning, analyzing, and providing activities that further children's development than early childhood providers who are unaware of the development process. Consequently, children have a much richer and more successful learning experience. Understanding where children's skills are within a developmental progression can be a particular challenge when addressing the needs of young children with disabilities, including those who are multilingual and racially, ethnically, and culturally diverse. However, most early childhood providers do not receive coursework within their preparation programs that include STEM concepts such as learning trajectories and developmental progressions to support young children's STEM learning. Furthermore, competencies that support early childhood STEM instructional methods, such as integrating technology and art; inclusive practices; culturally and linguistically informed pedagogy; and providing modifications and accessible materials for all children with disabilities (Moon et al., 2012), should be embedded in coursework to ensure that personnel are prepared to support STEM learning. Additionally, there is limited professional development (PD) for early childhood personnel on STEM, including using technology and art within STEM learning to support their development of this knowledge base (Jamil et al., 2017).

Families who are aware of the benefits of a STEM curriculum are more likely to be supportive of STEM education and encourage activities in the home that develop STEM concepts (National Center on Early Childhood Development, Teaching, and Learning, 2021b). While multiple tools used to teach STEM concepts to young children are increasingly available to families, including mobile technology, many families do not have exposure to and knowledge of STEM development and receive little support from early childhood providers on how best to integrate these tools into daily routines, art and play to help young children explore STEM concepts. This is particularly true for young children with disabilities, where families may need to make modifications for their young child to participate in STEM opportunities (Waters et al., 2022).

This absolute priority will advance the Secretary's Supplemental Priorities related to promoting equity in student access to educational resources and

opportunities, and meeting students' social, emotional, and academic needs. See Secretary's Final Priorities and Definitions for Discretionary Grants Programs, 86 FR 70612 (Dec. 10, 2021).

**Priority:**

The purpose of this priority is to fund a cooperative agreement to establish and operate a national Center on Science, Technology, Engineering, and Mathematics (STEM) for Young Children with Disabilities to achieve, at a minimum, the following expected outcomes:

(a) Expanded body of knowledge on implementing evidence-based<sup>1</sup> practices (EBPs) for early STEM learning that integrates STEM learning trajectories<sup>2</sup> and inclusive and culturally and linguistically informed evidence-based STEM instructional methods and practices, including through the use of technology and art, within learning opportunities to support all young children with disabilities and their families, including those who are multilingual and racially, ethnically, and culturally diverse in developing STEM concepts.

(b) Increased capacity of faculty in institutions of higher education (IHEs), including Historically Black Colleges and Universities (HBCUs), Tribally Controlled Colleges and Universities (TCCUs), and other Minority Serving Institutions (MSIs),<sup>3</sup> to integrate STEM learning trajectories and inclusive and culturally and linguistically informed evidence-based STEM instructional methods and practices, including through the use of technology and art,

within programs of study to prepare an early childhood workforce with the necessary knowledge, skills, and competencies to support STEM learning for all young children with disabilities and their families, including those who are multilingual and racially, ethnically, and culturally diverse.

(c) Increased capacity of early childhood PD providers in State and local early childhood systems to integrate STEM learning trajectories and inclusive and culturally and linguistically informed evidence-based STEM instructional methods and practices, including through the use of technology and art, into their PD to build competence in the early childhood workforce to support STEM learning for all young children with disabilities and their families, including those who are multilingual and racially, ethnically, and culturally diverse.

(d) Increased capacity of early childhood personnel to integrate STEM learning trajectories and inclusive and culturally and linguistically informed STEM instructional methods and practices, including through the use of technology and art, into supports and services provided to all young children with disabilities and their families, including those who are multilingual and racially, ethnically, and culturally diverse.

(e) Increased capacity of families, including those who are multilingual and racially, ethnically, and culturally diverse, to integrate developmentally appropriate STEM learning opportunities into everyday routines, including through the use of technology and art.

In addition to these programmatic requirements, to be considered for funding under this priority, applicants must meet the application and administrative requirements in this priority, which are:

(a) Demonstrate, in the narrative section of the application under "Significance," how the proposed project will—

(1) Address the need in the field for increased knowledge about STEM learning, including through the use of technology and art, for young children with disabilities and their families, including those who are multilingual and racially, ethnically, or culturally diverse. To meet this requirement the applicant must—

(i) Demonstrate knowledge of the current and emerging EBPs in STEM learning for all young children; and inclusive and culturally and linguistically informed evidence-based STEM instructional methods and practices, including the use of

technology, art, and other accommodations to improve access to STEM learning for young children with disabilities, including those who are multilingual and racially, ethnically, and culturally diverse;

(ii) Demonstrate knowledge of equity issues within STEM learning for young children with disabilities and their families, including those who are multilingual and racially, ethnically, and culturally diverse, and the role of faculty, including faculty at HBCUs, TCCUs, and other MSIs, and PD providers in addressing these issues; and

(iii) Demonstrate knowledge of current educational and policy issues and national initiatives relating STEM learning, including through the use of technology and art, for all young children and their families; and specifically for young children with disabilities and their families, including those who are multilingual and racially, ethnically, and culturally diverse;

(2) Address current and emerging capacity needs of faculty, including faculty at HBCUs, TCCUs, and other MSIs, to integrate STEM learning trajectories and inclusive and culturally and linguistically informed evidence-based STEM instructional methods and practices, including through the use of technology and art, into early childhood preparation programs of study that will prepare high-quality providers that serve young children with disabilities and their families, including those who are multilingual and racially, ethnically, and culturally diverse. To meet this requirement, the applicant must—

(i) Present information and data on the current capacity of IHE faculty, including faculty in HBCUs, TCCUs, and other MSIs, to effectively prepare early childhood preservice personnel to integrate STEM learning trajectories and inclusive and culturally and linguistically informed evidence-based STEM instructional methods and practices, including through the use of technology and art, within early childhood curriculum and learning opportunities to serve young children with disabilities, including those who are multilingual and racially, ethnically, and culturally diverse; and

(ii) Present information and data on how STEM learning, including through the use of technology and art, is currently included within early childhood personnel preparation programs, including programs in HBCUs, TCCUs, and other MSIs;

(3) Address current and emerging needs of PD providers to provide PD to early childhood personnel to integrate STEM learning trajectories and

<sup>1</sup> For the purposes of this priority, "evidence-based" means, at a minimum, evidence demonstrating a rationale (as defined in 34 CFR 77.1) based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.

<sup>2</sup> Research-based learning trajectories include three parts: (1) a goal; (2) a developmental progression; and (3) teaching. Learning trajectories are grounded in content knowledge of the topic (for example science, technology, engineering, or math). To reach the goal, children learn each successive level of thinking in the developmental progression. Children move through the progression via teaching designed to build understanding and skill that enables thinking at each higher level. Teaching includes the environment, interactions, and activities. At the core of learning trajectories is children's thinking and learning so that educational experiences developmentally appropriate (Clements & Sarama, 2017/2019).

<sup>3</sup> For purposes of this priority, "Historically Black Colleges and Universities" means colleges and universities that meet the criteria set out in 34 CFR 608.2; "Tribally Controlled Colleges and Universities" has the meaning ascribed to it in section 316(b)(3) of the Higher Education Act of 1965 (HEA); and "Minority-Serving Institutions" means institutions that are eligible to receive assistance under sections 316 through 320 of part A of title III, under part B of title III, or under title V of the HEA.

inclusive and culturally and linguistically informed evidence-based STEM instructional methods and practices, including through the use of technology and art, into early childhood learning opportunities that will improve early STEM learning for young children with disabilities, including those who are multilingual and racially, ethnically, and culturally diverse. To meet this requirement, the applicant must—

(i) Present information and data on the current capacity of PD providers to effectively provide PD to early childhood personnel to integrate STEM learning trajectories and inclusive and culturally and linguistically informed evidence-based STEM instructional methods and practices, including through the use of technology and art, into early learning curriculum and learning opportunities;

(ii) Demonstrate knowledge of the implementation supports necessary for early childhood personnel to implement new practices;

(iii) Demonstrate knowledge of the current capacity of early childhood personnel to integrate STEM learning trajectories and inclusive and culturally and linguistically informed evidence-based STEM instructional methods and practices, including through the use of technology and art, into early childhood curriculum and early learning opportunities; and

(iv) Demonstrate knowledge of the current capacity of early childhood personnel to educate, engage, and support families of young children with disabilities, including those who are multilingual and racially, ethnically, and culturally diverse, to implement early STEM learning activities, including through the use of technology and art, into everyday routines;

(4) Address current and emerging needs of all families, including those who are multilingual and racially, ethnically, and culturally diverse, to integrate developmentally appropriate STEM learning opportunities, into everyday routines, including through the use of technology and art; and

(5) Improve the potential for early STEM outcomes for young children with disabilities, including those who are multilingual and racially, ethnically, and culturally diverse; and indicate the likely magnitude or importance of these outcomes.

(b) Demonstrate, in the narrative section of the application under “Quality of project services,” how the proposed project will—

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin,

gender, age, or disability. To meet this requirement, the applicant must describe how it will—

(i) Identify the needs of the intended recipients for technical assistance (TA) and information;

(ii) Ensure that services and products meet the needs of the intended recipients of the grant; and

(iii) Address the needs of young children with disabilities and their families who are multilingual and racially, ethnically, and culturally diverse, to access early childhood programs that integrate STEM learning trajectories and inclusive and culturally and linguistically informed evidence-based STEM instructional methods and practices, including through the use of technology and art;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes; and

(ii) In Appendix A, the logic model (as defined in 34 CFR 77.1) by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework (and provide a copy in Appendix A) to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

*Note:* The following websites provide more information on logic models and conceptual frameworks: [https://osepideasthatwork.org/sites/default/files/2021-12/ConceptualFramework\\_Updated.pdf](https://osepideasthatwork.org/sites/default/files/2021-12/ConceptualFramework_Updated.pdf) and [www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework](http://www.osepideasthatwork.org/resources-grantees/program-areas/ta-ta/tad-project-logic-model-and-conceptual-framework).

(4) Be based on current research and make use of EBPs in STEM learning, including through the use of technology and art. To meet this requirement, the applicant must describe—

(i) The current research on practices to support STEM learning, including through the use of technology and art, for young children with disabilities, including those who are multilingual and racially, ethnically, and culturally diverse;

(ii) The current research about adult learning principles and implementation science or improvement science that will inform the proposed products and services; and

(iii) How the proposed project will incorporate current STEM research and EBPs that promote inclusive and culturally and linguistically informed early STEM learning, including through the use of technology and art, in the development and dissemination of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) How it proposes to expand the knowledge base on:

(A) EBPs on early STEM learning and inclusive and culturally and linguistically informed evidence-based STEM instructional methods and practices, including through the use of technology and art, for young children with disabilities, including those who are multilingual and racially, ethnically, and culturally diverse;

(B) The use of technology and art to improve access to early STEM learning for young children with disabilities, including those who are multilingual and racially, ethnically, and culturally diverse;

(C) What young children should learn in early STEM at different ages, taking into consideration linguistics and racial, ethnic, and cultural diversity;

(D) The use of mobile technology to support STEM learning for young children with disabilities, including those who are multilingual and racially, ethnically, and culturally diverse;

(E) Integration of early STEM learning, including through the use of technology and art, into IFSPs under Part C of the IDEA and IEPs under Part B of the IDEA;

(F) Implementation supports for early childhood programs and providers to apply inclusive and culturally and linguistically informed evidence-based STEM instructional methods and practices, including through the use of technology and art in early learning settings; and

(G) Implementation supports for early childhood programs and providers to educate, engage, and support families of young children with disabilities, including those who are multilingual and racially, ethnically, and culturally diverse to effectively integrate STEM learning opportunities in daily routines.

(ii) Its proposed approach to universal, general TA,<sup>4</sup> which must

<sup>4</sup> “Universal, general TA” means TA and information provided to independent users through their own initiative, resulting in minimal

identify the intended recipients of the products and services under this approach and should include, at minimum, activities focused on—

(A) Developing and disseminating resources, materials, and tools to support faculty, including faculty at HBCUs, TCCUs, and other MSIs, and PD providers to embed current STEM learning trajectories and inclusive and culturally and linguistically informed evidence-based STEM instructional methods and practices, including through the use of technology and art, for young children with disabilities, including those who are multilingual and racially, ethnically, and culturally diverse, within personnel preparation programs and PD opportunities;

(B) Developing and disseminating resources, materials, and tools for early childhood programs and providers on current EBP on early STEM learning for young children with disabilities, including those who are multilingual and racially, ethnically, and culturally diverse, such as: how to incorporate early STEM learning into IFSPs and IEPs to achieve child outcomes; how to use technology, including mobile technology, and art to increase opportunities for early STEM learning; how to deliver inclusive and culturally and linguistically informed instruction or interventions that promote early STEM learning; and how to work with families, including those who are multilingual and racially, ethnically, and culturally diverse, to help promote early STEM learning, including through the use of technology and art, with their child; and

(C) Partnering with national professional organizations, foundations, industry and research organizations and TA centers to disseminate information on how young children with disabilities, including those who are multilingual and racially, ethnically, and culturally diverse, can be included in broader early STEM learning research, policies, and practices, including within new curricula and learning materials.

(iii) Its proposed approach to targeted, specialized TA,<sup>5</sup> which must identify

interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's website by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

<sup>5</sup> "Targeted, specialized TA" means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes

the intended recipients, including the type and number of recipients that will receive the products and services under this approach, including recipients that are multilingual and racially, ethnically, and culturally diverse; and

(6) Develop products and implement services that maximize efficiency and consider linguistic, racial, ethnic, and cultural diversity. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes.

(7) Develop a dissemination plan that describes how the applicant will systematically distribute information, products, and services to varied intended audiences, using a variety of dissemination strategies, to promote awareness and use of the Center's products and services.

(c) In the narrative section of the application under "Quality of the project evaluation," include an evaluation plan for the project developed in consultation with and implemented by a third-party evaluator.<sup>6</sup> The evaluation plan must—

(1) Articulate formative and summative evaluation questions, including important process and outcome evaluation questions. These questions should be related to the project's proposed logic model required in paragraph (b)(2)(ii) of this notice;

(2) Describe how progress in and fidelity of implementation, as well as project outcomes will be measured to answer the evaluation questions. Specify the measures and associated instruments or sources for data appropriate to the evaluation questions. Include information regarding reliability and validity of measures where appropriate;

one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

<sup>6</sup> A "third-party evaluator" is an independent and impartial program evaluator who is contracted by the grantee to conduct an objective evaluation of the project. This evaluator must not have participated in the development or implementation of any project activities, except for the evaluation activities, or have any financial interest in the outcome of the evaluation.

(3) Describe strategies for analyzing data and how data collected as part of this plan will be used to inform and improve service delivery over the course of the project and to refine the proposed logic model and evaluation plan, including subsequent data collection;

(4) Provide a timeline for conducting the evaluation, and include staff assignments for completing the plan. The timeline must indicate that the data will be available annually for the annual performance report (APR);

(5) Dedicate sufficient funds in each budget year to cover the costs of developing or refining the evaluation plan in consultation with the third-party evaluator, as well as the costs associated with the implementation of the evaluation plan by the third-party evaluator.

(d) Demonstrate, in the narrative section of the application under "Adequacy of resources and quality of project personnel," how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project providers, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate, in the narrative section of the application under "Quality of the management plan," how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project providers, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Responsibilities are allocated among key project personnel and any consultants and subcontractors, and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and



(4) The proposed project will benefit from a diversity of perspectives, including those who are multilingual and racially, ethnically, and culturally diverse; those with disabilities; researchers; faculty, including those at HBCUs, TCCUs and other MSIs; early childhood administrators; providers across different types of early childhood programs; families; and policy makers; among others, in its development and operation.

(f) Address the following application requirements. The applicant must—

(1) Include, in Appendix A, personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kick-off meeting in Washington, DC, after receipt of the award, and an annual planning meeting in Washington, DC with the OSEP project officer and other relevant staff during each subsequent year of the project period.

*Note:* Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two- and one-half day project directors' conference in Washington, DC, during each year of the project period;

(iii) Two annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP; and

(iv) A one-day intensive 3+2 review meeting in Washington, DC, during the last half of the second year of the project period;

(3) Include, in the budget, a line item for an annual set-aside of five percent of the grant amount to support emerging needs that are consistent with the proposed project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Describe how doctoral students or post-doctoral fellows, including those who are multilingual and racially, ethnically and culturally diverse, will be engaged in the project to increase the number of future leaders, especially those who are multilingual and racially, ethnically, and culturally diverse, in the field who are knowledgeable about STEM learning for young children with

disabilities, including the use of technology and art, to increase access to STEM learning;

(5) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(6) Ensure that annual project progress toward meeting project goals is posted on the project website; and

(7) Include, in Appendix A, an assurance that the project will assist OSEP with the transfer of pertinent resources and products and will maintain the continuity of services during the transition at the end of this award period, as appropriate.

#### *Fourth and Fifth Years of the Project:*

In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), as well as—

(a) The recommendations of a 3+2 review team consisting of experts who have experience and knowledge in STEM for young children with disabilities, including those who are multilingual and racially, ethnically, and culturally diverse. This review will be conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

(b) The timeliness with which, and how well, the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and likely to result in the project achieving its intended outcomes.

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#### *Waiver of Proposed Rulemaking:*

Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

*Program Authority:* 20 U.S.C. 1474 and 1481.

*Note:* Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

*Note:* The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

*Note:* The regulations in 34 CFR part 86 apply to IHEs only.

## II. Award Information

*Type of Award:* Cooperative agreement.

*Estimated Available Funds:* \$1,450,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2024 from the list of unfunded applications from this competition.

*Maximum Award:* We will not make an award exceeding \$1,450,000 for a single budget period of 12 months.

*Estimated Number of Awards:* 1.

*Note:* The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

## III. Eligibility Information

1. *Eligible Applicants:* State educational agencies; State lead agencies under Part C of the IDEA; local educational agencies (LEAs), including charter schools that operate as LEAs under State law; IHEs; other public

agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

2. a. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

b. *Indirect Cost Rate Information:* This program uses an unrestricted indirect cost rate. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see <https://www2.ed.gov/about/offices/list/ocfo/intro.html>.

c. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

3. *Subgrantees:* Under 34 CFR 75.708(b) and (c) a grantee under this competition may award subgrants—to directly carry out project activities described in its application—to the following types of entities: IHEs, nonprofit organizations suitable to carry out the activities proposed in the application, and other public agencies. The grantee may award subgrants to entities it has identified in an approved application or that it selects through a competition under procedures established by the grantee.

#### 4. *Other General Requirements:*

(a) Recipients of funding under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants for, and recipients of, funding must, with respect to the aspects of their proposed project relating to the absolute priority, involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

## IV. Application and Submission Information

### 1. *Application Submission*

*Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 7, 2022 (87 FR 75045) and available at [www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs](http://www.federalregister.gov/documents/2022/12/07/2022-26554/common-instructions-for-applicants-to-department-of-education-discretionary-grant-programs), which contain

requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on December 27, 2021.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

3. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 70 pages and (2) use the following standards:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the recommended page limit does apply to all of the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

## V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are as follows:

(a) *Significance (10 points).*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by

the proposed project, including the nature and magnitude of those gaps or weaknesses;

(ii) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study; and

(iii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(b) *Quality of project services (35 points).*

(1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

(ii) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework;

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice;

(iv) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services; and

(v) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(c) *Quality of the project evaluation (20 points).*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project;

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies;

(iii) The extent to which the methods of evaluation will provide performance

feedback and permit periodic assessment of progress toward achieving intended outcomes; and

(iv) The qualifications, including relevant training, experience, and independence, of the evaluator.

(d) *Adequacy of resources and quality of project personnel (15 points).*

(1) The Secretary considers the adequacy of resources for the proposed project and the quality of project personnel.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In determining the adequacy of resources and quality of project personnel for the proposed project, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel;

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors;

(iii) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization;

(iv) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project; and

(v) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(e) *Quality of the management plan (20 points).*

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks;

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project;

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project; and

(iv) How the applicant will ensure that a diversity of perspectives is brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications.

4. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions, and under 2 CFR 3474.10, in

appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

5. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently \$250,000), under 2 CFR 200.206(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds \$10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed \$10,000,000.

6. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you

receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to [www.ed.gov/fund/grant/apply/appforms/appforms.html](http://www.ed.gov/fund/grant/apply/appforms/appforms.html).

5. *Performance Measures:* For purposes of Department reporting under 34 CFR 75.110, the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the ETechM2 Program. These measures are:

- *Program Performance Measure 1:* The percentage of ETechM2 Program products and services judged to be of high quality by an independent review panel of experts qualified to review the substantial content of the products and services.

- *Program Performance Measure 2:* The percentage of ETechM2 Program products and services judged to be of high relevance to improving outcomes for infants, toddlers, children, and youth with disabilities.

- *Program Performance Measure 3:* The percentage of ETechM2 Program products and services judged to be useful in improving results for infants, toddlers, children, and youth with disabilities.

- *Program Performance Measure 4.1:* The Federal cost per unit of accessible educational materials funded by the ETechM2 Program.

- *Program Performance Measure 4.2:* The Federal cost per unit of accessible educational materials from the National Instructional Materials Accessibility Center funded by the ETechM2 Program.

- *Program Performance Measure 4.3:* The Federal cost per unit of video description funded by the ETechM2 Program.

The measures apply to projects funded under this competition, and grantees are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590).

The Department will also closely monitor the extent to which the products and services provided by the project meet needs identified by stakeholders and may require the project to report on such alignment in

its annual and final performance reports.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Other Information

*Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit

your search to documents published by the Department.

**Katherine Neas,**

*Deputy Assistant Secretary. Delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.*

[FR Doc. 2023-03596 Filed 2-21-23; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC23-36-000.

*Applicants:* NextEra Energy Resources, LLC, North American Sustainable Energy Fund, L.P., Energy Power Investment Company, LLC, EPP Renewable Energy, LLC.

*Description:* Supplement to December 9, 2022, Joint Application for Authorization Under Section 203 of the Federal Power Act of NextEra Energy Resources, LLC.

*Filed Date:* 2/14/23.

*Accession Number:* 20230214-5196.

*Comment Date:* 5 p.m. ET 2/24/23.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG23-81-000.

*Applicants:* SR Snipesville III, LLC.

*Description:* SR Snipesville III, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 2/14/23.

*Accession Number:* 20230214-5186.

*Comment Date:* 5 p.m. ET 3/7/23.

*Docket Numbers:* EG23-82-000.

*Applicants:* SR McNeal, LLC.

*Description:* SR McNeal, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 2/14/23.

*Accession Number:* 20230214-5188.

*Comment Date:* 5 p.m. ET 3/7/23.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER23-696-001.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Amendment: Request to Defer Action-Original ISA No. 6717; Queue NQ182; Docket ER23-696 to be effective 12/31/9998.

*Filed Date:* 2/15/23.

*Accession Number:* 20230215-5087.

*Comment Date:* 5 p.m. ET 3/8/23.

*Docket Numbers:* ER23-755-001.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Amendment: Amendment of NSA, SA No. 6723; Queue No. AC2-154/AD2-060 in Docket No. ER23-755 to be effective 11/30/2022.

*Filed Date:* 2/15/23.

*Accession Number:* 20230215-5033.

*Comment Date:* 5 p.m. ET 3/8/23.

*Docket Numbers:* ER23-1114-000.

*Applicants:* American Kings Solar, LLC.

*Description:* Petition for Limited Waiver of American Kings Solar, LLC.

*Filed Date:* 2/14/23.

*Accession Number:* 20230214-5198.

*Comment Date:* 5 p.m. ET 2/24/23.

*Docket Numbers:* ER23-1115-000.

*Applicants:* Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: Niagara Mohawk Power Corporation submits tariff filing per 35.13(a)(2)(iii): NYISO-National Grid Joint 205: Amended SGIA SunEast Fairway Solar Project SA2647 to be effective 2/3/2023.

*Filed Date:* 2/15/23.

*Accession Number:* 20230215-5026.

*Comment Date:* 5 p.m. ET 3/8/23.

*Docket Numbers:* ER23-1116-000.

*Applicants:* American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: American Transmission Systems, Incorporated submits tariff filing per 35.13(a)(2)(iii): ATSI submits one Construction Agreement, SA No. 5938 to be effective 4/17/2023.

*Filed Date:* 2/15/23.

*Accession Number:* 20230215-5034.

*Comment Date:* 5 p.m. ET 3/8/23.

*Docket Numbers:* ER23-1117-000.

*Applicants:* Ameren Illinois Company, Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: Ameren Illinois Company submits tariff filing per 35.13(a)(2)(iii): 2023-02-15\_SA 3028 Ameren IL-Prairie Power Project #37 Clifton to be effective 4/17/2023.

*Filed Date:* 2/15/23.

*Accession Number:* 20230215-5059.

*Comment Date:* 5 p.m. ET 3/8/23.

*Docket Numbers:* ER23-1118-000.

*Applicants:* Alabama Power Company.

*Description:* § 205(d) Rate Filing: Southeast EEM Agreement Market Rules Revisions Filing (Appendix B) to be effective 2/16/2023.

*Filed Date:* 2/15/23.

*Accession Number:* 20230215-5074.

*Comment Date:* 5 p.m. ET 3/8/23.

*Docket Numbers:* ER23–1119–000.  
*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: Revisions to Add Clarification to Attachment AO (RR 522) to be effective 4/17/2023.

*Filed Date:* 2/15/23.

*Accession Number:* 20230215–5090.

*Comment Date:* 5 p.m. ET 3/8/23.

*Docket Numbers:* ER23–1120–000.

*Applicants:* Nevada Cogeneration Associates #1.

*Description:* Baseline eTariff Filing: Application for Market Based Rate Authority to be effective 5/1/2023.

*Filed Date:* 2/15/23.

*Accession Number:* 20230215–5112.

*Comment Date:* 5 p.m. ET 3/8/23.

*Docket Numbers:* ER23–1121–000.

*Applicants:* Wagon Wheel Wind Project, LLC.

*Description:* § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 4/17/2023.

*Filed Date:* 2/15/23.

*Accession Number:* 20230215–5114.

*Comment Date:* 5 p.m. ET 3/8/23.

*Docket Numbers:* ER23–1122–000.

*Applicants:* Diversion Wind Energy LLC.

*Description:* § 205(d) Rate Filing: Revised Market-Based Rate Tariff Filing to be effective 4/17/2023.

*Filed Date:* 2/15/23.

*Accession Number:* 20230215–5116.

*Comment Date:* 5 p.m. ET 3/8/23.

*Docket Numbers:* ER23–1123–000.

*Applicants:* Portland General Electric Company.

*Description:* § 205(d) Rate Filing: Amendments To The PGE OATT Attachment P to be effective 4/16/2023.

*Filed Date:* 2/15/23.

*Accession Number:* 20230215–5125.

*Comment Date:* 5 p.m. ET 3/8/23.

*Docket Numbers:* ER23–1124–000.

*Applicants:* Public Service Company of Colorado.

*Description:* § 205(d) Rate Filing: 2023–02–15 TSGT WAPA BAMA Reunion 727–PSCo to be effective 4/16/2023.

*Filed Date:* 2/15/23.

*Accession Number:* 20230215–5154.

*Comment Date:* 5 p.m. ET 3/8/23.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern

time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 15, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–03631 Filed 2–21–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

#### Filings Instituting Proceedings

*Docket Numbers:* PR23–32–000.

*Applicants:* Black Hills/Kansas Gas Utility Company, LLC.

*Description:* § 284.123 Rate Filing: BHKG Revised Statement of Rates to be effective 2/1/2023.

*Filed Date:* 2/14/23.

*Accession Number:* 20230214–5148.

*Comment Date:* 5 p.m. ET 3/7/23.

*Docket Numbers:* RP23–439–000.

*Applicants:* Kinder Morgan Illinois Pipeline LLC.

*Description:* Compliance filing: Penalty Revenue Annual Report for 2022 to be effective N/A.

*Filed Date:* 2/15/23.

*Accession Number:* 20230215–5031.

*Comment Date:* 5 p.m. ET 2/27/23.

*Docket Numbers:* RP23–440–000.

*Applicants:* Kinder Morgan Louisiana Pipeline LLC.

*Description:* Compliance filing: Penalty Revenue Crediting Report-KMLP 12 months ending December 2022 to be effective N/A.

*Filed Date:* 2/15/23.

*Accession Number:* 20230215–5032.

*Comment Date:* 5 p.m. ET 2/27/23.

*Docket Numbers:* RP23–441–000.

*Applicants:* National Fuel Gas Supply Corporation.

*Description:* Compliance filing: Fuel Tracker Filing GT&C 41 (2023) to be effective 4/1/2023.

*Filed Date:* 2/15/23.

*Accession Number:* 20230215–5035.

*Comment Date:* 5 p.m. ET 2/27/23.

*Docket Numbers:* RP23–442–000.

*Applicants:* Empire Pipeline, Inc.

*Description:* § 4(d) Rate Filing: Empire Fuel Tracker Per GT&C 23.3 (2023) to be effective 4/1/2023.

*Filed Date:* 2/15/23.

*Accession Number:* 20230215–5069.

*Comment Date:* 5 p.m. ET 2/27/23.

*Docket Numbers:* RP23–443–000.

*Applicants:* Southern Natural Gas Company, L.L.C.

*Description:* Compliance filing: Abandon Multiple X-Rate Schedules Compliance Filing 2023 to be effective 4/1/2023.

*Filed Date:* 2/15/23.

*Accession Number:* 20230215–5088.

*Comment Date:* 5 p.m. ET 2/27/23.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date.

Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 15, 2023.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2023–03630 Filed 2–21–23; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2020–0689; FRL 8372–03–OLEM]

### Information for Petitioners Seeking a No-Migration Variance Under the RCRA Land Disposal Restrictions for Temporary Placement of Treated Hazardous Waste Within a Permitted Subtitle C Landfill

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Guidance policy.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing guidance on petitions for a No Migration Variance (NMV) under the Land Disposal

Restrictions (LDRs) pursuant to the Resource Conservation and Recovery Act (RCRA) for persons applying for a NMV for a waste pile temporarily located within a RCRA-permitted Subtitle C landfill cell. EPA solicited public comments on a draft of this guidance on January 19, 2021 (86 FR 5190). The public comment period ended February 18, 2021. EPA received nine (9) comments on the draft guidance. EPA appreciates the comments. The Agency carefully considered all of the points raised and has concluded that the comments do not provide reason for EPA to modify the guidance as it was proposed. Accordingly, EPA is finalizing the guidance without alteration. The guidance and the Agency's response to these comments are located in the Docket (EPA-HQ-OLEM-2020-0689).

**FOR FURTHER INFORMATION CONTACT:** Bethany Russell, Waste Characterization Branch, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery (5304P), Environmental Protection Agency, 1200 Pennsylvania Ave NW, Washington, DC 20460; email address: [russell.bethany@epa.gov](mailto:russell.bethany@epa.gov). Phone: 404-562-8542.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

###### *A. Does this action apply to me?*

This notice is directed to the public in general. However, it will be of particular interest to RCRA Subtitle C permitted landfills.

###### *B. How can I get copies of this document and other related information?*

1. *Docket.* EPA has established a docket for this action under Docket ID No. EPA-HQ-OLEM-2020-0689. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The Docket Center's hours of operations are 8:30 a.m.-4:30 p.m., Monday-Friday (except Federal Holidays). For further information on the EPA Docket Center services and the current status, see: <https://www.epa.gov/dockets>.

2. *Electronic Access.* You may access this **Federal Register** document electronically from <https://www.federalregister.gov/documents/current>. You may access the full guidance document at <https://rcrapublic.epa.gov/rcraonline/details.xhtml?rcra=14952>.

Dated: February 14, 2023.

**Carolyn Hoskinson,**

*Director, Office of Resource Conservation and Recovery, Office of Land and Emergency Management.*

[FR Doc. 2023-03651 Filed 2-21-23; 8:45 am]

**BILLING CODE 6560-50-P**

#### **EXPORT-IMPORT BANK**

##### **[Public Notice 2022-3033]**

##### **Agency Information Collection Activities: Comment Request**

**AGENCY:** Export-Import Bank of the United States.

**ACTION:** Submission for OMB review and comments request.

**SUMMARY:** The Export-Import Bank of the United States (EXIM Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The Application for Special Buyer Credit Limit (SBCL) Under Multi-Buyer Export Credit Insurance Policies is used by policyholders, the majority of whom are U.S. small businesses, who export U.S. goods and services. This application provides EXIM Bank with the credit information on a foreign buyer credit limit request needed to make a determination of eligibility for EXIM Bank support in adherence to legislatively required reasonable reassurance of repayment and other statutory requirements.

The application can be reviewed at: <https://img.exim.gov/s3fs-public/pub/pending/eib-92-51.pdf>.

Application for Special Buyer Credit Limit (SBCL) Under Multi-Buyer Export Credit Insurance Policies.

**DATES:** Comments should be received on or before March 24, 2023 to be assured of consideration.

**ADDRESSES:** Comments may be submitted electronically on [www.regulations.gov](http://www.regulations.gov) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038, Attn: OMB 3048-0015.

##### **SUPPLEMENTARY INFORMATION:**

*Titles and Form Number:* EIB 92-51 Application for Special Buyer Credit Limit (SBCL) Under Multi-Buyer Export Credit Insurance Policies.

*OMB Number:* 3048-0015.

*Type of Review:* Regular.

*Need and Use:* This application provides EXIM Bank with the credit information on a foreign buyer credit

limit request needed to make a determination of eligibility for EXIM Bank support in adherence to legislatively required reasonable reassurance of repayment and other statutory requirements.

The changes to this form are intended to improve the sequence and layout of the foreign buyer credit questions and add description of the drop-down menus.

*Affected Public:* This form affects business entities involved in the export of U.S. goods and services. The estimated number of respondents and the annual hour burden has been lowered to only count the new applicants. The estimate of the overall burden to the public has been reduced after considering that EXIM automatically processes renewals of Special Buyer Credit Limit requests in the Exim Online (EOL) system, and, thus, the renewing policyholders don't have to manually complete an application.

*The number of respondents:* 2,000.

*Estimated time per respondents:* 30 minutes.

*The frequency of response:* As needed.

*Annual hour burden:* 1,000 total hours.

*Government Expenses:*

*Reviewing time per hour:* 1 hour.

*Responses per year:* 2,000.

*Reviewing time per year:* 2,000 hours.

*Average wages per hour:* \$42.50.

*Average cost per year: (time \* wages):* \$85,000.

*Benefits and overhead:* 20%.

*Total Government Cost:* \$102,000.

**Joyce B. Stone,**

*Assistant Corporate Secretary.*

[FR Doc. 2023-03573 Filed 2-21-23; 8:45 am]

**BILLING CODE 6690-01-P**

#### **FEDERAL DEPOSIT INSURANCE CORPORATION**

**[OMB No. 3064-0030]**

##### **Agency Information Collection Activities: Proposed Collection Renewal; Comment Request**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the request to renew the existing information collection described below (OMB Control No.

3064–0030). The notice of the proposed renewal for this information collection was previously published in the **Federal Register** allowing for a 60-day comment period.

**DATES:** Comments must be submitted on or before March 24, 2023.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website:* <https://www.fdic.gov/resources/regulations/federal-register-publications/>.
- *Email:* [comments@fdic.gov](mailto:comments@fdic.gov). Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128,

Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**FOR FURTHER INFORMATION CONTACT:**

Manny Cabeza, Regulatory Counsel, 202–898–3767, [mcabeza@fdic.gov](mailto:mcabeza@fdic.gov), MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:** Proposal to renew the following currently approved collection of information:

1. *Title:* Securities of State Nonmember Banks and State Savings Associations.

*OMB Number:* 3064–0030.

*Affected Public:* Insured state nonmember banks and state savings associations.

*Burden Estimate:*

**SUMMARY OF ESTIMATED ANNUAL BURDEN**

[OMB No. 3064–0030]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Form 3: Initial Statement of Beneficial Ownership, 12 CFR 335.611 (Mandatory).	Reporting (On Occasion) .....	20	1.33	01:00	27
2. Form 4: Statement of Changes in Beneficial Ownership, 12 CFR 335.612 (Mandatory).	Reporting (On Occasion) .....	20	79.48	00:30	795
3. Form 5: Annual Statement of Beneficial Ownership, 12 CFR 335.613 (Mandatory).	Reporting (Annual) .....	20	0.92	01:00	18
4. Form 8–A: Registration of Certain Classes of Securities, 12 CFR 335.211.	Reporting (On Occasion) .....	3	1	03:00	9
5. Form 8–K: Current Report, 12 CFR 335.311 (Mandatory).	Reporting (On Occasion) .....	20	10.03	05:17	1,062
6. Form 10: General Form for the Registration of Securities, 12 CFR 335.211 (Mandatory).	Reporting (On Occasion) .....	1	1	215:33	216
7. Form 10–K: Annual Report, 12 CFR 335.311 (Mandatory).	Reporting (Annual) .....	20	1.1	1,296:50	28,530
8. Form 10–Q: Quarterly Report, 12 CFR 335.311 (Mandatory).	Reporting (Quarterly) .....	20	3.1	104:40	6,489
9. Form 12b–25: Notification of Late Filing, 12 CFR 335.211 (Mandatory).	Reporting (On Occasion) .....	3	1	02:30	8
10. Form 15: Certification and Notice of Termination or Registration, 12 CFR 335.211 (Mandatory).	Reporting (On Occasion) .....	1	1	01:30	2
11. Form 25: Notification of Removal from Listing and Registration, 12 CFR 335.211 (Mandatory).	Reporting (On Occasion) .....	1	1	01:00	1
12. Schedule 13D: Certain Beneficial Ownership Changes, 12 CFR 335.211 (Mandatory).	Reporting (On Occasion) .....	1	1	14:30	15
13. Schedule 13–E–3: Going Private Transactions by Certain Issuers or Their Affiliates, 12 CFR 335.211 (Mandatory).	Reporting (On Occasion) .....	1	1	137:25	137
14. Schedule 13G: Certain Acquisitions of Stock, 12 CFR 335.211 (Mandatory).	Reporting (On Occasion) .....	5	1	12:24	62
15. Schedule 14A: Proxy Statements, 12 CFR 335.211 (Mandatory).	Reporting (Annual) .....	20	1.1	120:06	2,642
16. Schedule 14C: Information Required in Information Statements, 12 CFR 335.211 (Mandatory).	Reporting (On Occasion) .....	20	1.1	96:52	2,131



SUMMARY OF ESTIMATED ANNUAL BURDEN—Continued  
[OMB No. 3064–0030]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
17. Schedule 14D–1: Tender Offer, 12 CFR 335.211 (Mandatory).	Reporting (On Occasion) .....	4	1	22:23	90
18. FDIC Form D, Statement of Policy on Offering Circulars (Voluntary).	Reporting (On Occasion) .....	154	1	01:00	154
19. FDIC Form 1–A, Statement of Policy on Offering Circulars (Voluntary).	Reporting (On Occasion) .....	154	1	01:00	154
Total Annual Burden (Hours): ....	.....	.....	.....	.....	42,542

Source: FDIC.

*General Description of Collection:*

Section 12(i) of the Exchange Act grants authority to the Federal banking agencies to administer and enforce Sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act and Sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002. Pursuant to Section 12(i), the FDIC has the authority, including rulemaking authority, to administer and enforce these enumerated provisions as may be necessary with respect to state nonmember banks and state savings associations over which it has been designated the appropriate Federal banking agency. Section 12(i) generally requires the FDIC to issue regulations substantially similar to those issued by the Securities and Exchange Commission (SEC) regulations to carry out these responsibilities. Thus, part 335 of the FDIC regulations incorporates by cross-reference the SEC rules and regulations regarding the disclosure and filing requirements of registered securities of state nonmember banks and state savings associations.

After evaluating the remaining ICs in the 2020 ICR, the FDIC has determined that 2 of the 19 ICs in the 2020 ICR should be removed from OMB No. 3064–0030. Form 8–C, where a reporting bank will file with the FDIC when registering certain classes of securities, has been removed. Form 10–C, where a covered bank will file with the FDIC specific business and financial information on risk factors in accordance with the registration of securities, has also been removed. The FDIC has removed these forms because they have never been used and are not required to be filed.

The estimated annual burden for OMB No. 3064–0030 of 42,542 hours, represents an increase of 30,996 hours from the 2020 ICR (11,546 hours). This increase is driven primarily by (1) revised respondent and response count

estimation methodologies for each of the ICs; (2) revised hourly burden estimates from the SEC for the SEC forms and schedules that are used in this ICR; (3) the removal of two collections from the 2020 ICR—Form 8–C and Form 10–C; and (4) the addition of two collections, both pursuant to the “Statement of Policy Regarding the Use of Offering Circulars in Connection with the Public Distribution of Bank Securities”<sup>1</sup> (1996 SOP), for Forms D and 1–A. The most significant increase annual burden comes from an increase in the hourly burden estimate for Form 10–K. The 2020 ICR estimated that Form 10–K would take about 140 hours per response. However, the SEC’s most recent estimates for Form 10–K are 2,255.36 hours. Even after reducing the hourly burden by about 42.5 percent to account for heterogeneity in filing and reporting requirements across the 20 active FDIC-supervised IDIs expected to file Form 10–K the FDIC estimates that the hourly burden will be approximately 1,297 hours. This results in a total estimated annual burden of 28,530 hours, an increase of 25,590 hours from the 2020 ICR for this IC (2,940). This revision alone accounts for over 82 percent of the increase in total annual burden from the 2020 ICR to this ICR.

This information collection includes the following:

**Beneficial Ownership Forms: FDIC Forms 3, 4, and 5 (FDIC Form Numbers 6800/03, 6800/04, and 6800/05)**

Pursuant to Section 16 of the Exchange Act, every director, officer, and owner of more than ten percent of a class of equity securities registered with the FDIC under Section 12 of the Exchange Act must file with the FDIC a statement of ownership regarding such securities. The initial filing is on Form

3 and changes are reported on Form 4. The Annual Statement of beneficial ownership of securities is on Form 5. The forms contain information on the reporting person’s relationship to the company and on purchases and sales of such equity securities. 12 CFR 335.601 through 336.613 of the FDIC’s regulations, which cross-reference 17 CFR 240.16a of the SEC’s regulations, provide the FDIC form requirements for FDIC Forms 3, 4, and 5 in lieu of SEC Forms 3, 4, and 5, which are described at 17 CFR 249.103 (Form 3), 249.104 (Form 4), and 249.105 (Form 5).

**Form 8–A for Registration of Certain Classes of Securities**

Form 8–A is used for registration pursuant to Section 12(b) or (g) of the Exchange Act of any class of securities of any issuer which is required to file reports pursuant to Section 13 or 15(d) of that Act or pursuant to an order exempting the exchange on which the issuer has securities listed from registration as a national securities exchange. Form 8–A is described at 17 CFR 249.208a. There is no actual “Form 8–A” as filers must produce a customized narrative document in compliance with the requirements in accordance with the filer’s particular circumstances.

**Form 8–K: Current Report**

This is the current report that is used to report the occurrence of any material events or corporate changes that are of importance to investors or security holders and have not been reported previously by the registrant. It provides more current information on certain specified events than would Forms 10–Q and 10–K. The form description is at 17 CFR 249.308. There is no actual “Form 8–K” as filers must produce a customized narrative document in compliance with the requirements in

<sup>1</sup> 81 FR 46807 (September 5, 1996)



accordance with the filer's particular circumstances.

#### **Form 10: Forms for Registration of Securities**

Form 10 is described at 17 CFR 249.210. There is no actual "Form 10" as filers must produce a customized narrative document in compliance with the requirements in accordance with the filer's particular circumstances.

#### **Form 10-K: Annual Report**

This annual report is used by issuers registered under the Exchange Act to provide information described in Regulation S-K, 17 CFR 229. The form is described at 17 CFR 249.310. There is no actual "Form 10-K" as filers must produce a customized narrative document in compliance with the requirements in accordance with the filer's particular circumstances.

#### **Form 10-Q: Quarterly Reports**

The Form 10-Q is a report filed quarterly by most reporting companies. It includes unaudited financial statements and provides a continuing overview of major changes in the company's financial position during the year, as compared to the prior corresponding period. The report must be filed for each of the first three fiscal quarters of the company's fiscal year and is due within 40 or 45 days of the close of the quarter, depending on the size of the reporting company. The description of Form 10-Q is at 17 CFR 249.308a. There is no actual "Form 10-Q" as filers must produce a customized narrative document in compliance with the requirements in accordance with the filer's particular circumstances.

#### **Form 12b-25: Notification of Late Filing**

This notification extends the reporting deadlines for filing quarterly and annual reports for qualifying companies. There is no FDIC Form 12b-25. The form is described at 17 CFR 249.322.

#### **Form 15: Certification and Notice of Termination of Registration**

This form is filed by each issuer to certify that the number of holders of record of a class of security registered under section 12(g) of the Exchange Act is reduced to a specified level in order to terminate the registration of the class of security. For a bank, the number of holders of record of a class of registered security must be reduced to less than 1,200 persons. For a savings association, the number of record holders of a class of registered security must be reduced to (1) less than 300 persons; or (2) less than 500 persons and the total assets of the

issuer have not exceeded \$10 million on the last day of each of the issuer's most recent three fiscal years. In general, registration terminates 90 days after the filing of the certification. There is no FDIC Form 15. This form is described at 17 CFR 249.323.

#### **Schedule 13D: Certain Beneficial Ownership Changes**

This Schedule discloses beneficial ownership of certain registered equity securities. Any person or group of persons who acquire a beneficial ownership of more than 5 percent of a class of registered equity securities of certain issuers must file a Schedule 13D reporting such acquisition together with certain other information within ten days after such acquisition. Moreover, any material changes in the facts set forth in the Schedule generally precipitates a duty to promptly file an amendment on Schedule 13D. The SEC's rules define the term beneficial owner to be any person who directly or indirectly shares voting power or investment power (the power to sell the security). There is no FDIC form for Schedule 13D. This schedule is described at 17 CFR 240.13d-101.

#### **Schedule 13E-3: Going Private Transactions by Certain Issuers or Their Affiliates**

This schedule must be filed if an issuer engages in a solicitation subject to Regulation 14A or a distribution subject to Regulation 14C, in connection with a going private merger with its affiliate. An affiliate and an issuer may be required to complete, file, and disseminate a Schedule 13E-3, which directs that each person filing the schedule state whether it reasonably believes that the Rule 13e-3 transaction is fair or unfair to unaffiliated security holders. There is no FDIC form for Schedule 13E-3. This schedule is described at 17 CFR 240.13e-100.

#### **Schedule 13G: Certain Acquisitions of Stock**

Certain acquisitions of stock that are over than 5 percent of an issuer must be reported to the public. Schedule 13G is a much abbreviated version of Schedule 13D that is only available for use by a limited category of persons (such as banks, broker/dealers, and insurance companies) and even then only when the securities were acquired in the ordinary course of business and not with the purpose or effect of changing or influencing the control of the issuer. There is no FDIC form for Schedule 13G. This schedule is described at 17 CFR 240.13d-102.

#### **Schedule 14A: Proxy Statements**

State law governs the circumstances under which shareholders are entitled to vote. When a shareholder vote is required and any person solicits proxies with respect to securities registered under Section 12 of the Exchange Act, that person generally is required to furnish a proxy statement containing the information specified by Schedule 14A. The proxy statement is intended to provide shareholders with the proxy information necessary to enable them to vote in an informed manner on matters intended to be acted upon at shareholders' meetings, whether the traditional annual meeting or a special meeting. Typically, a shareholder is also provided with a proxy card to authorize designated persons to vote his or her securities on the shareholder's behalf in the event the holder does not vote in person at the meeting. Copies of preliminary and definitive (final) proxy statements and proxy cards are filed with the FDIC. There is no FDIC form for Schedule 14A. The description of this schedule is at 17 CFR 240.14a-101.

#### **Schedule 14C: Information Required in Information Statements**

An information statement prepared in accordance with the requirements of the SEC's Regulation 14C is required whenever matters are submitted for shareholder action at an annual or special meeting when there is no proxy solicitation under the SEC's Regulation 14A. There is no FDIC form for Schedule 14C. This schedule is described at 17 CFR 240.14c-101.

#### **Schedule 14D-1: Tender Offer**

This schedule is also known as Schedule TO. Any person, other than the issuer itself, making a tender offer for certain equity securities registered pursuant to Section 12 of the Exchange Act is required to file this schedule if acceptance of the offer would cause that person to own over 5 percent of that class of the securities. This schedule must be filed and sent to various parties, such as the issuer and any competing bidders. In addition, the SEC's Regulation 14D sets forth certain requirements that must be complied with in connection with a tender offer. This schedule is described at 17 CFR 240.14d-100. There is no actual form for Schedule 14D-1 as filers must produce a customized narrative document in compliance with the requirements in accordance with the filer's particular circumstances.

#### **Request for Comment**

Comments are invited on: (a) Whether the collection of information is

necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on February 16, 2023.

**James P. Sheesley,**

*Assistant Executive Secretary.*

[FR Doc. 2023-03655 Filed 2-21-23; 8:45 am]

**BILLING CODE 6714-01-P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Tuesday, February 28, 2023 at 10:30 a.m. and its continuation at the conclusion of the open meeting on March 2, 2023.

**PLACE:** 1050 First Street NE, Washington, DC and virtual (this meeting will be a hybrid meeting).

**STATUS:** This meeting will be closed to the public.

#### MATTERS TO BE CONSIDERED:

Compliance matters pursuant to 52 U.S.C. 30109.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

Matters concerning participation in civil actions or proceedings or arbitration.

\* \* \* \* \*

**CONTACT PERSON FOR MORE INFORMATION:** Judith Ingram, Press Officer, telephone: (202) 694-1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

**Laura E. Sinram,**

*Secretary and Clerk of the Commission.*

[FR Doc. 2023-03782 Filed 2-17-23; 4:15 pm]

**BILLING CODE 6715-01-P**

## FEDERAL HOUSING FINANCE AGENCY

[No. 2023-N-3]

### Federal Home Loan Bank Community Support Program—Opportunity To Comment on Members Subject to Review

**AGENCY:** Federal Housing Finance Agency.

**ACTION:** Notice.

**SUMMARY:** The Federal Housing Finance Agency (FHFA) is announcing that FHFA will review all Federal Home Loan Bank (Bank) members subject to community support review in 2023 under FHFA's community support requirements regulation. This Notice invites the public to comment on the community support performance of members subject to the review.

**DATES:** Public comments on individual Bank members' community support performance must be submitted to FHFA on or before March 24, 2023.

**ADDRESSES:** Comments on members' community support performance should be submitted to FHFA by electronic mail at

[hmgcommunitysupportprogram@fhfa.gov](mailto:hmgcommunitysupportprogram@fhfa.gov) or by fax to (202) 777-1209.

#### FOR FURTHER INFORMATION CONTACT:

Mike Price, Senior Policy Analyst, Division of Housing Mission and Goals, (202) 649-3134, [Michael.Price@fhfa.gov](mailto:Michael.Price@fhfa.gov); Shannon Fountain, Senior Policy Analyst, Division of Housing Mission and Goals, (202) 649-3501, [Shannon.Fountain@fhfa.gov](mailto:Shannon.Fountain@fhfa.gov); Tiffani Moore, Supervisory Policy Analyst, (202) 649-3304, [Tiffani.Moore@fhfa.gov](mailto:Tiffani.Moore@fhfa.gov), Federal Housing Finance Agency, Ninth Floor, 400 Seventh Street SW, Washington, DC 20219.

#### SUPPLEMENTARY INFORMATION:

##### I. Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires FHFA to promulgate regulations establishing standards of community investment or service that Bank members must meet in order to maintain access to long-term Bank advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by FHFA must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and the Bank member's record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, FHFA has promulgated a community support requirements regulation that establishes standards

and criteria a Bank member must meet in order to maintain access to long-term Bank advances and establishes review criteria FHFA must apply in evaluating a member's community support performance. *See* 12 CFR part 1290. The regulation includes standards and criteria for the two statutory factors—members' CRA performance and members' record of lending to first-time homebuyers. 12 CFR 1290.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 1290.3(b). All members subject to community support review, including those not subject to the CRA, must meet the first-time homebuyer standard. 12 CFR 1290.3(c). Members that have been certified as community development financial institutions (CDFIs) are deemed to be in compliance with the community support requirements and are not subject to periodic community support review, unless the CDFI member is also an insured depository institution or a CDFI credit union. 12 CFR 1290.2(d). In addition, FHFA will not review an institution's community support performance until it has been a Bank member for at least one year. 12 CFR 1290.2(e).

Under the regulation, FHFA reviews each applicable member once every two years. Starting April 3, 2023, each member that is subject to community support review will be required to submit a completed Community Support Statement to FHFA. All Community Support Statements for this review cycle must be submitted by October 31, 2023. FHFA will review the community support performance of each member after receiving the member's completed Community Support Statement.

##### II. Public Comments

FHFA encourages the public to submit comments by March 24, 2023, on the community support performance of Bank members subject to community support review. Each Bank is required to post a notice on its public website and to notify its Advisory Council, nonprofit housing developers, community groups, and other interested parties in its district of the opportunity to submit comments on the community support programs and activities of Bank members subject to community support review, with the name and address of each such member. 12 CFR 1290.2(c)(1). In reviewing a member for community support compliance, FHFA will consider any public comments it has received concerning the member. 12 CFR 1290.2(c)(3). To ensure consideration by FHFA, comments concerning the community support

performance of members subject to community support review must be submitted to FHFA, either by electronic mail to [hmgcommunitysupportprogram@fhfa.gov](mailto:hmgcommunitysupportprogram@fhfa.gov), or by fax to (202) 777-1209, on or before March 24, 2023. 12 CFR 1290.2(c)(2).

The names of members currently subject to community support review can be found on the public websites for the individual Banks at:

Federal Home Loan Bank of Boston—District 1 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont) <https://www.fhlbboston.com/fhlbank-boston/hci-community-support#/>

Federal Home Loan Bank of New York—District 2 (New Jersey, New York, Puerto Rico, U.S. Virgin Islands) <https://www.fhlbny.com/>

Federal Home Loan Bank of Pittsburgh—District 3 (Delaware, Pennsylvania, West Virginia) <https://www.fhlb-pgh.com/Files/Resources/CSS.pdf>

Federal Home Loan Bank of Atlanta—District 4 (Alabama, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia) <https://corp.fhlbatl.com/community-support-program/>

Federal Home Loan Bank of Cincinnati—District 5 (Kentucky, Ohio, Tennessee) <https://www.fhlbcin.com/who-we-are/membership/community-support-program/>

Federal Home Loan Bank of Indianapolis—District 6 (Indiana, Michigan) <https://www.fhlbi.com/services/affordable-housing/>

Federal Home Loan Bank of Chicago—District 7 (Illinois, Wisconsin) <https://www.fhlbc.com/community-investment/community-support-program>

Federal Home Loan Bank of Des Moines—District 8 (Alaska, American Samoa, Guam, Hawaii, Idaho, Iowa, Northern Mariana Islands, Minnesota, Missouri, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming) <https://www.fhlbdm.com/legal/community-support-statements/>

Federal Home Loan Bank of Dallas—District 9 (Arkansas, Louisiana, Mississippi, New Mexico, Texas) <https://www.fhlb.com/membership/community-support-program>

Federal Home Loan Bank of Topeka—District 10 (Colorado, Kansas, Nebraska, Oklahoma) <https://www.fhlbtopeka.com/community-programs-community-support-statements>

Federal Home Loan Bank of San Francisco—District 11 (Arizona, California, Nevada) [www.fhlbsf.com/community-programs/community-support-review](http://www.fhlbsf.com/community-programs/community-support-review)

**Sandra L. Thompson,**  
Director, Federal Housing Finance Agency.  
[FR Doc. 2023-03603 Filed 2-21-23; 8:45 am]

**BILLING CODE 8070-01-P**

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Notice

**TIME AND DATE:** 10:00 a.m., Tuesday, February 28, 2023

**PLACE:** The Richard V. Backley Hearing Room, Room 511, 1331 Pennsylvania Avenue NW, Suite 504 North, Washington, DC 20004 (enter from F Street entrance).

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will consider and act upon the following in open session: *Secretary of Labor on behalf of Otten v. Continental Cement Co.*, Docket No. CENT 2021-0013. (Issues include whether the Judge erred in concluding that the operator took an adverse employment action against the complainant in violation of sections 105(c) and 103(f) of the Mine Act.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

**CONTACT PERSON FOR MORE INFO:** Emogene Johnson (202) 434-9935/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

**PHONE NUMBER FOR LISTENING TO MEETING:** 1-(866) 236-7472; Passcode: 678-100

*Authority:* 5 U.S.C. 552b.

Dated: February 17, 2023.

**Sarah L. Stewart,**  
Deputy General Counsel.

[FR Doc. 2023-03728 Filed 2-17-23; 4:15 pm]

**BILLING CODE 6735-01-P**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Submission for OMB Review; Comment Request

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Federal Trade Commission (FTC) requests that the

Office of Management and Budget (OMB) extend for three years the current Paperwork Reduction Act (PRA) clearance for information collection requirements contained in the FTC's portion of the information collection requirements contained in the FTC's Consumer Product Warranty Rule (Warranty Rule or Rule). The current clearance expires on February 28, 2023.

**DATES:** Comments must be received by March 24, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. The [reginfo.gov](http://reginfo.gov) web link is a United States Government website produced by OMB and the General Services Administration (GSA). Under PRA requirements, OMB's Office of Information and Regulatory Affairs (OIRA) reviews Federal information collections.

**FOR FURTHER INFORMATION CONTACT:** Laura Basford, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326-2343.

### SUPPLEMENTARY INFORMATION:

*Title:* Rule Concerning Disclosure of Written Consumer Product Warranty Terms and Conditions.

*OMB Control Number:* 3084-0111.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* The Warranty Rule is one of three rules<sup>1</sup> that the FTC implemented pursuant to requirements of the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.* (Warranty Act or Act).<sup>2</sup> The Warranty Rule specifies the information that must appear in a written warranty on a consumer product<sup>3</sup> costing more than \$15. The Rule tracks Section 102(a) of the Warranty Act,<sup>4</sup> specifying information that must appear in the written warranty and, for certain disclosures, mandates the exact language that must be used.<sup>5</sup>

<sup>1</sup> The other two rules relate to the pre-sale availability of warranty terms and minimum standards for informal dispute settlement mechanisms that are incorporated into a written warranty.

<sup>2</sup> 40 FR 60168 (Dec. 31, 1975).

<sup>3</sup> The definition of *consumer product* excludes products purchased solely for commercial or industrial use. 16 CFR 701.1(b).

<sup>4</sup> 15 U.S.C. 2302(a).

<sup>5</sup> 40 FR 60168, 60169-60170.

Neither the Warranty Rule nor the Act requires that a manufacturer or retailer warrant a consumer product in writing, but if they choose to do so, the warranty must comply with the Rule.

*Estimated Annual Hours Burden:*  
216,752 hours.

*Estimated Annual Labor Cost Burden:*  
\$29,652,215.

On October 27, 2022, the FTC sought comment on the information collection requirements associated with the Rule. 87 FR 65065. The FTC received no germane comments during the public comment period. Pursuant to OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.*, the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule. For more details about the Rule requirements and the basis for the calculations summarized below, see 87 FR 65065.

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

**Josephine Liu,**

*Assistant General Counsel for Legal Counsel.*

[FR Doc. 2023-03628 Filed 2-21-23; 8:45 am]

**BILLING CODE 6750-01-P**

## FEDERAL TRADE COMMISSION

[File No. 222 3019]

### The Bountiful Company; Analysis of Proposed Consent Order To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement; request for comment.

**SUMMARY:** The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before March 24, 2023.

**ADDRESSES:** Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write "The Bountiful Company; File No. 222 3019" on your comment and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex P), Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Michael Ostheimer (202-326-2699), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 24, 2023. Your comment—including your name and your state—

will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Because of heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write "The Bountiful Company; File No. 222 3019" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex P), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the <https://www.regulations.gov> website—as

legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website at <http://www.ftc.gov> to read this document and the news release describing the proposed settlement. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before March 24, 2023. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from The Bountiful Company ("Bountiful"). The proposed consent order ("proposed order") has been placed on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter involves Bountiful's alleged manipulation of the *Amazon.com* product pages for a number of its Nature's Bounty and Sundown brand dietary supplement products. Bountiful is a vendor to Amazon, Inc., which allows its vendors to create or submit requests to create "variation" relationships between products sold on *Amazon.com* that are substantially similar, like a shirt which is available in different sizes and colors. The product detail page of products that are in a variation relationship displays the total number of ratings and reviews, the average star rating, and the individual reviews for all the products in the variation relationship. All the products in a variation relationship also share any "#1 Best Seller" or "Amazon's Choice" badges.

According to the Commission's proposed complaint, during 2020 and 2021, Bountiful submitted requests to Amazon to create numerous variation

relationships involving products with different formulations. The proposed complaint quotes a Bountiful employee explaining that they did this with new products to "try and ramp them faster as they were NOT selling and we wanted to give them a little boost in R[atings]&R[evIEWS] to gain visibility and allow them to also borrow the 'amazon choice' badge and best seller badge which worked."

The proposed complaint alleges that Bountiful violated Sections 5(a) and 12 of the FTC Act by misrepresenting that: (a) the apparent reviewers of certain of its products sold on *Amazon.com* had used and endorsed the products; (b) certain of its products sold on *Amazon.com* had received the numbers of customer ratings appearing on their *Amazon.com* product pages; (c) certain of its products sold on *Amazon.com* had obtained the average star ratings displayed on their *Amazon.com* product pages; (d) certain of its products sold on *Amazon.com* were number one best sellers; and (e) certain of its products sold on *Amazon.com* had earned an Amazon's Choice badge.

The proposed order contains provisions designed to prevent Bountiful from engaging in similar acts and practices in the future and to provide monetary relief.

Provision I prohibits Bountiful from making any misrepresentation about or through the ratings, reviews, badges, or endorsements of any of its products or services, including false claims that someone reviewed or used the product or service or about the number of ratings or reviews the product or service has, its average star rating, its having earned an Amazon's Choice badge, or its being a best seller. Provision II prohibits Bountiful from distorting or otherwise misrepresenting what consumers think of its products or services by creating relationships between different products sold online or by procuring, suppressing, boosting, organizing, selectively publishing, up-voting, down-voting, or editing consumer reviews or ratings of its products or services.

Provision III requires Bountiful to pay the Commission \$600,000 within eight days of the effective date of the order. Provision IV sets out additional requirements related to the monetary relief.

Provisions V through VIII of the proposed order are reporting and compliance provisions. Provision V requires acknowledgement of the order and dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Provision VI ensures notification to the FTC of changes in

corporate status and mandates that the company submit an initial compliance report to the FTC. Provision VII requires the company to create and retain certain documents relating to its compliance with the order. Provision VIII mandates that the company make available to the FTC information or subsequent compliance reports, as requested. Provision IX states that the proposed order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

**April J. Tabor,**  
Secretary.

[FR Doc. 2023-03560 Filed 2-21-23; 8:45 am]

**BILLING CODE 6750-01-P**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Submission for OMB Review; Comment Request

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Federal Trade Commission (FTC) requests that the Office of Management and Budget (OMB) extend for three years the current Paperwork Reduction Act (PRA) clearance for information collection requirements of its Affiliate Marketing Rule, which applies to certain motor vehicle dealers, and its shared enforcement with the Consumer Financial Protection Bureau (CFPB) of the provisions (subpart C) of the CFPB's Regulation V regarding other entities (CFPB Rule). That clearance expires on February 28, 2023.

**DATES:** Comments must be received by March 24, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. The [reginfo.gov](http://reginfo.gov) web link is a United States Government website produced by OMB and the General Services Administration (GSA). Under PRA requirements, OMB's Office of Information and Regulatory Affairs (OIRA) reviews Federal information collections.

**FOR FURTHER INFORMATION CONTACT:**

David Walko, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326-2880.

**SUPPLEMENTARY INFORMATION:**

*Title:* Affiliate Marketing Rule (16 CFR part 680).

*OMB Control Number:* 3084-0131.

*Type of Review:* Extension of currently approved collection.

*Likely Respondents:* Motor vehicle dealers, financial institutions, trade associations.

*Estimated Annual Burden:* The total estimated burden is 7,795 hours and \$367,176 in associated labor costs. Commission staff estimates that the capital and non-labor costs associated with the Affiliate Marketing Rule's disclosure requirements are de minimis, because covered entities can consolidate affiliate marketing notices with other notices they already provide to their customers such as notices issued pursuant to the Commission's Gramm-Leach-Bliley Act Financial Privacy Rule (16 CFR part 313). On December 8, 2022, the Commission sought comment on the disclosure requirements associated with the Rule. 87 FR 75271. No relevant comments were received. For more details about the Rule requirements, the background behind these information collection provisions, and the basis for these calculations, see 87 FR 75271 (Dec. 8, 2022).

Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.*, the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for those information collection requirements.

**Request for Comments**

Your comment—including your name and your state—will be placed on the public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not

include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

**Josephine Liu,**

*Assistant General Counsel for Legal Counsel.*

[FR Doc. 2023-03629 Filed 2-21-23; 8:45 am]

**BILLING CODE 6750-01-P**

**GENERAL SERVICES ADMINISTRATION**

[Notice-MY-2023-02; Docket No. BSC-PMF-2023-0001; Sequence No. 1]

**Public Review of Shared Services Performance Management Framework; Request for Public Comment**

**AGENCY:** Office of Government-wide Policy (OGP); General Services Administration, (GSA).

**ACTION:** Notice; request for public comment.

**SUMMARY:** This notice informs the public of the opportunity to provide input on the performance management framework that has been created in support of the Quality Service Management Offices (QSMOs). This input will be considered as GSA OGP updates the performance management framework.

**DATES:** The performance framework is available on [regulations.gov](https://www.regulations.gov). Interested parties can review the framework and submit comments via the method outlined in the **ADDRESSES** section on or before March 24, 2023.

**ADDRESSES:** Submit comments in response to Notice BSC-PMF-2023-0001 by <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "Notice BSC-PMF-2023-0001." Select the link "Comment Now" that corresponds with "Notice BSC-PMF-2023-0001." Follow the instructions provided at the screen. Please include your name, company name (if any), and "Notice BSC-PMF-2023-0001" on your attached document.

• *Instructions:* Please submit comments only and cite "Notice BSC-PMF-2023-0001," in all correspondence related to this notice. Comments received generally will be posted without change to <http://www.regulations.gov>, including any

personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <http://www.regulations.gov>, approximately two-to-three business days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:**

Courtney Anderson, Program Manager, Office of Shared Solutions and Performance Improvement (OSSPI), OGP, at 202-368-2681, or by email at [courtney.anderson@gsa.gov](mailto:courtney.anderson@gsa.gov).

**SUPPLEMENTARY INFORMATION:** On April 26, 2019, the Office of Management and Budget (OMB) published OMB memorandum 19-16, Centralized Mission Support Capabilities for the Federal Government (available at <https://www.whitehouse.gov/wp-content/uploads/2019/04/M-19-16.pdf>). This memo states that "The success of this strategy will require strong, collaborative governance and an operating model that responds to varying levels of maturity within agencies, continuous engagement of agency operational teams, establishment and adherence to common business standards, and assessment of QSMO performance (including the investments made over time to improve QSMO quality and effectiveness)." The OSSPI within OGP has worked to develop a phased approach to measuring QSMO performance as mandated by Memo 19-16. The purpose of this framework is to measure the effectiveness of the QSMOs in key areas—customer, financial, standards adoption, marketplace operations, and IT modernization.

GSA is seeking public feedback on this performance framework, including comments on understandability of the standards, suggested changes, and usefulness of the framework to the QSMO marketplace.

Guiding questions include:

- Is this framework easy to understand?
- What would you change about the framework? Is there anything missing?

Comments will be used to make updates to the performance framework as needed.

**Krystal J. Brumfield,**

*Associate Administrator, Office of Government-wide Policy, General Services Administration.*

[FR Doc. 2023-03587 Filed 2-21-23; 8:45 am]

**BILLING CODE 6820-14-P**

## GENERAL SERVICES ADMINISTRATION

[Notice—ME—2023—01; Docket No. 2023—0002; Sequence No. 6]

### Notice of High-Performance Computing (HPC) Summit

**AGENCY:** Office of Government-wide Policy (OGP), General Services Administration (GSA).

**ACTION:** Virtual webinar meeting notice.

**SUMMARY:** GSA is hosting a virtual High-Performance Computing (HPC) Summit to bring together the Federal and industry communities for a series of panel discussions covering HPC implementation progress, opportunities, and best practices.

**DATES:** The meeting date is scheduled for Thursday, April 20, 2023.

**ADDRESSES:** This is a virtual event. The call-in information will be made available upon registration. All attendees, including industry partners, must register for the *Zoom.Gov* event here: [https://gsa.zoomgov.com/webinar/register/WN\\_rIfNxEkdToWco5S2irse8w](https://gsa.zoomgov.com/webinar/register/WN_rIfNxEkdToWco5S2irse8w). Members of the press are invited to attend but are required to register with the GSA press office (via email [press@gsa.gov](mailto:press@gsa.gov)) by Thursday, April 13, 2023.

**FOR FURTHER INFORMATION CONTACT:** Tom Santucci at [thomas.santucci@gsa.gov](mailto:thomas.santucci@gsa.gov) or 202-230-4822 or Lee Ellis at [lee.ellis@gsa.gov](mailto:lee.ellis@gsa.gov) or 202-253-6448.

#### SUPPLEMENTARY INFORMATION:

#### Background

The Executive Office of the President issued Executive Order (E.O.) 13702, titled, “Creating a National Strategic Computing Initiative” (80 FR 46177), and located at: <https://www.govinfo.gov/content/pkg/FR-2015-08-03/pdf/2015-19183.pdf>, in August 2015 to maximize the benefits of High-Performance Computing (HPC). The potential opportunities of implementing HPC include improving economic competitiveness and accelerating scientific research. The E.O. includes the following five strategic objectives for supporting the implementation of HPC across all Federal information systems and services:

(1) The United States must deploy and apply new HPC technologies broadly for economic competitiveness and scientific discovery.

(2) The United States must foster public-private collaboration, relying on the respective strengths of government, industry, and academia to maximize the benefits of HPC.

(3) The United States must adopt a whole-of-government approach that

draws upon the strengths of and seeks cooperation among all executive departments and agencies with significant expertise or equities in HPC while also collaborating with industry and academia.

(4) The United States must develop a comprehensive technical and scientific approach to transition HPC research on hardware, system software, development tools, and applications efficiently into development and, ultimately, operations.

More recently, agencies, such as the National Institute of Standards and Technology (NIST), have continued developing guidance and prioritizing HPC to combat growing cybersecurity threats. NIST Publication SP 800-23, <https://csrc.nist.gov/publications/detail/sp/800-223/draft>, released in February 2023 as a draft, discusses HPC system threat analysis, security postures, challenges, and recommendations. The typical information technology (IT) practitioner knows very little about HPC. This summit will provide IT practitioners of any skill level with practical knowledge and insight into HPC as both an industry and a service, as well as how the Federal Government can use HPC now and in the future.

Additional legislation, such as the bipartisan CHIPS Act of 2022, provides additional funding for both HPC research and development, as well as the standup of government programs on HPC at various agencies. The combination of Executive Orders, policies, and legislation create a comprehensive framework for the Federal Government to prioritize the adoption of High-Performance Computing to advance key IT Modernization efforts.

#### Format

The High-Performance Computing (HPC) Summit convenes leaders from the Federal Government and industry to discuss their experiences and exposures to HPC. If you have questions for the panelists, you can email them to the GSA Office of Government-wide Policy (OGP) IT Modernization Team at [dccoi@gsa.gov](mailto:dccoi@gsa.gov) by Thursday, April 13, 2023.

#### Special Accommodations

Zoom will have the option to enable closed captioning. If additional accommodations are needed, please indicate on the Zoom Webinar registration form.

#### Live Webinar Speakers (Subject To Change Without Notice)

*Hosted by:*

- Tom Santucci, Director, IT Modernization; Office of Government-wide Policy
- Robert Sears, Director, N-Wave, National Oceanic and Atmospheric Administration; Office of Chief Information Officer (CIO)
- Gordon Bitko, Executive Vice President of Policy, Public Sector, Information Technology Industry Council (ITIC)
- CIO Council Innovation Committee, tri-chaired by Ann Dunkin, CIO, Department of Energy; Chris Brazier, Chief Technology Officer & Mission IT Infrastructure & Services Department Chief, Defense Threat Reduction Agency; Chezian Sivagnanam, Chief Architect, Federal Deposit Insurance Corporation

#### Agenda Topic Areas

- Public Policy
- Science and CHIPS Act
- Climate
- Energy
- Biomedical
- Military

**Thomas Santucci,**

Director, IT Modernization, General Services Administration, Office of Government-wide Policy, Division of IT Modernization.

[FR Doc. 2023-03563 Filed 2-21-23; 8:45 am]

**BILLING CODE 6820-14-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—DP23-001, Panel A, Assessing the Effectiveness of Programs, Policies, or Practices That Affect Social Determinants of Health To Promote Health Equity and Reduce Health Disparities in Chronic Diseases; Amended Notice of Closed Meeting

Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—DP23-001, Panel A, Assessing the Effectiveness of Programs, Policies, or Practices that Affect Social Determinants of Health to Promote Health Equity and Reduce Health Disparities in Chronic Diseases; April 18, 2023, 10 a.m.–6 p.m., EDT, teleconference, in the original **Federal Register** notice. The meeting was published in the **Federal Register** on February 9, 2023, Volume 88, Number 27, page 8431.



The meeting is being amended to change the meeting date and should read as follows:

*Date:* April 21, 2023.

*Time:* 10 a.m.–6 p.m., EDT.

The meeting is closed to the public.

**FOR FURTHER INFORMATION CONTACT:**

Natalie Brown, M.P.H., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop S107–8, Atlanta, Georgia 30341–3717; Telephone: (404) 639–4601; Email: [NBrown3@cdc.gov](mailto:NBrown3@cdc.gov).

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2023–03568 Filed 2–21–23; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–CE23–004: Research Grants for Preventing Violence and Violence Related Injury; Amended Notice of Closed Meeting

Notice is hereby given of a change in the meeting of the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–CE23–004: Research Grants for Preventing Violence and Violence Related Injury; March 28–29, 2023, 8:30 a.m.–5:30 p.m., EDT, Videoconference, in the original FRN. The meeting was published in the **Federal Register** on January 20, 2023, Volume 88, Number 13, page 3743.

The meeting is being amended to remove the second day and should read as follows:

*Date:* March 29, 2023

*Time:* 8:30 a.m.–5:00 p.m. (EDT)

*Place:* Videoconference.

The meeting is closed to the public.

**FOR FURTHER INFORMATION CONTACT:**

Aisha L. Wilkes, M.P.H., Scientific Review Officer, National Center for

Injury Prevention and Control, CDC, 4770 Buford Highway NE, Mailstop S106–9, Atlanta, Georgia 30341, Telephone: (404) 639–6473; Email: [AWilkes@cdc.gov](mailto:AWilkes@cdc.gov).

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2023–03565 Filed 2–21–23; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Notice of Closed Meeting

Pursuant to 5 U.S.C. 1009(d), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA OH–23–004, NIOSH Miner Safety and Health Program—Western Mining States Review; and RFA OH–23–005, NIOSH Robotic Mining Review.

*Date:* May 25, 2023.

*Time:* 1 p.m.–5 p.m., EDT.

*Place:* Teleconference.

*Agenda:* To review and evaluate grant applications.

**FOR FURTHER INFORMATION CONTACT:**

Michael Goldcamp, Ph.D., Scientific Review Officer, Office of Extramural Programs, National Institute for Occupational Safety and Health, CDC,

1905 Willowdale Road, Morgantown, West Virginia 26506; Telephone: (304) 285–5951; Email: [MGoldcamp@cdc.gov](mailto:MGoldcamp@cdc.gov).

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2023–03567 Filed 2–21–23; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Recharter for Advisory Council on Blood Stem Cell Transplantation

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Advisory Committee Act (FACA), the Department of Health and Human Services is hereby giving notice that the Advisory Council on Blood Stem Cell Transplantation (ACBSCT) has been rechartered. The effective date of the recharter is February 19, 2023.

**FOR FURTHER INFORMATION CONTACT:** Shelley Tims Grant (Designated Federal Officer); HRSA Division of Transplantation, HRSA, 5600 Fishers Lane, 08W67, Rockville, Maryland 20857; 301–443–8036; or [sgrant@hrsa.gov](mailto:sgrant@hrsa.gov).

**SUPPLEMENTARY INFORMATION:** The ACBSCT advises, assists, consults with, and makes recommendations to the Secretary of Health and Human Services, acting through the HRSA Administrator, on matters related to the activities of the C.W. Bill Young Cell Transplantation Program and National Cord Blood Inventory and other matters of significance concerning the activities under section 379 of the Public Health Service Act (42 U.S.C. 274k).

The ACBSCT shall provide a consolidated, comprehensive source of expert, unbiased analysis, and recommendations to the Secretary of Health and Human Services on the latest advances in the science of blood



stem cell transplantation and donation. The ACBSCT may also review the state of the science using adult stem cells and birthing tissues to develop new types of therapies for patients, for the purpose of considering the potential inclusion of such new types of therapies in the C.W. Bill Young Cell Transplantation Program.

The recharter for ACBSCT was approved on February 15, 2023. Recharter of the ACBSCT charter gives authorization for the ACBSCT to operate until February 19, 2025.

A copy of the ACBSCT charter is available on the ACBSCT website at <https://bloodstemcell.hrsa.gov/about/advisory-council>. A copy of the charter can also be obtained by accessing the FACA database that is maintained by the Committee Management Secretariat under the General Services Administration. The website address for the FACA database is <http://www.facadatabase.gov/>.

**Maria G. Button,**

*Director, Executive Secretariat.*

[FR Doc. 2023-03604 Filed 2-21-23; 8:45 am]

**BILLING CODE 4165-15-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, PAR-19-367: Maximizing Investigators' Research Award, February 23-24, 2023, 10:00 a.m. to 8:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting), which was published in the **Federal Register** on January 31, 2023, 88 FR 6288, Doc 2023-01953.

This meeting is being amended to change the panel name to "PAR-20-117: Maximizing Investigators' Research Award for Early-Stage Investigators". The meeting is closed to the public.

Dated: February 15, 2023.

**David W. Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023-03572 Filed 2-21-23; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Healthcare Inequities in AD/DR.

*Date:* March 14, 2023.

*Time:* 12:00 p.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Sandhya Sanghi, Ph.D., Scientific Review Officer, National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, (2N230) NIA/SRB, Bethesda, MD 20892, (301) 496-2879, [sandhya.sanghi@nih.gov](mailto:sandhya.sanghi@nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 15, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023-03645 Filed 2-21-23; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Minority Health and Health Disparities Special Emphasis Panel; John Lewis NIMHD Research Endowment Program.

*Date:* March 22, 2023.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, NIMHD DEM II, Suite 800, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Xinli Nan, M.D., Ph.D., Scientific Review Officer, Office of Extramural Research Activities, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 594-7784, [Xinli.Nan@nih.gov](mailto:Xinli.Nan@nih.gov).

Dated: February 15, 2023.

**David W. Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023-03571 Filed 2-21-23; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:** Dr. Maryann Puglielli at (240)-627-3723, or [maryann.puglielli@nih.gov](mailto:maryann.puglielli@nih.gov). Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301-496-

2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

**SUPPLEMENTARY INFORMATION:**

Technology description follows:

**Replicating RNA Vaccine for Crimean-Congo Hemorrhagic Fever Virus**

*Description of Technology:*

Crimean-Congo hemorrhagic fever (CCHF) is a deadly hemorrhagic fever having a high mortality rate. The disease results from infection of an individual by Crimean-Congo hemorrhagic fever virus (CCHFV), which is a tick-borne bunyavirus endemic in Southern and Eastern Europe, Africa, the Middle East, and Asia. Geographically, case distribution is consistent with the range of *Hyalomma* genus ticks, the main reservoir of CCHFV, and is likely to expand due to climate change. Humans may be infected from tick bites, through contact with infected animals or animal tissue. Nosocomial human-to-human transmission has also been described primarily for healthcare workers. Initial symptoms of CCHF include acute onset of a non-specific febrile illness consisting of sudden fever, myalgia, diarrhea, nausea, and vomiting. The hemorrhagic phase is characterized by large areas of severe bruising and uncontrolled bleeding throughout the body; among hospitalized patients, case fatality rates have ranged from 9–50%. Currently, there is no approved specific antiviral or vaccine for CCHFV infection.

Scientists at NIAID in collaboration with HDT Bio have developed a replicating RNA (repRNA) vaccine based on Venezuelan Equine Encephalitis Virus replicon RNA expressing either the nucleoprotein (repNP) or the glycoprotein precursor (repGPC) from CCHFV alone or in combination. In mice, the repNP vaccine primarily elicited a robust but non-neutralizing antibody response while repGPC elicited primarily cellular immunity against epitopes in the CCHFV NSm and Gc proteins. Vaccination with repNP or repNP + repGPC resulted in protection against challenge with a heterologous strain of CCHFV in mice.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

*Potential Commercial Applications:*

- Prophylactic usage against CCHFV infections in normal or high-risk populations.

- Therapeutic treatment, alone or in combination, in patients with CCHFV infection.

- Assay development for surveillance, diagnostic, and prevention measures.

*Competitive Advantages:*

- Uses a cell-free system to express antigens thereby increasing safety of the vaccine.

- RepRNA as a platform can drive high-level protein expression and mimics viral replication in a single round of replication resulting in a more robust immune response in comparison to DNA and mRNA platforms.

*Development Stage:* Pre-clinical.

*Inventors:* Heinz Feldmann (NIAID); David Hawman, (NIAID); and Jesse Erasmus (HDT Bio).

*Publications:* Leventhal, S. et al., “Replicating RNA Vaccination Elicits an Unexpected Immune Response that Efficiently Protects Mice Against Lethal Crimean-Congo Hemorrhagic Fever Virus Challenge”, *EBioMedicine* 82:104188 (2022).

*Intellectual Property:* U.S. provisional patent application 63/365,015 filed May 19, 2022.

*Licensing Contact:* To license this technology, please contact Dr. Maryann Puglielli at (240)–627–3723, or [maryann.puglielli@nih.gov](mailto:maryann.puglielli@nih.gov), and reference E–103–2022.

*Collaborative Research Opportunity:* The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. For collaboration opportunities, please contact Dr. Maryann Puglielli at (240)–627–3723, or [maryann.puglielli@nih.gov](mailto:maryann.puglielli@nih.gov).

Dated: February 8, 2023.

**Surekha Vathyam,**

*Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.*

[FR Doc. 2023–03595 Filed 2–21–23; 8:45 am]

**BILLING CODE 4140–01–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Center for Scientific Review; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Specialized Centers of Research Excellence (SCORE) on Sex Differences.

*Date:* March 21–22, 2023.

*Time:* 10:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Elaine Sierra-Rivera, Ph.D., IRG Chief, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, Bethesda, MD 20892, (301) 435–2514, [riverase@csr.nih.gov](mailto:riverase@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fertility Status as a Marker for Overall Health.

*Date:* March 21, 2023.

*Time:* 10:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Anthony Wing Sang Chan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 809K, Bethesda, MD 20892, (301) 496–9392, [chana3@csr.nih.gov](mailto:chana3@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Endocrine and Metabolic Systems.

*Date:* March 23, 2023.

*Time:* 9:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Victoria Martinez Virador, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–4703, [victoria.virador@nih.gov](mailto:victoria.virador@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Cancer Diagnostics and Treatments (CDT).

*Date:* March 23–24, 2023.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Marriott Georgetown, 1221 22nd Street NW, Washington, DC 20037.

*Contact Person:* Victor A. Panchenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 802B2,

Bethesda, MD 20892, [victor.panchenko@nih.gov](mailto:victor.panchenko@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Nephrology and Urology.

*Date:* March 23, 2023.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Stacey Nicole Williams, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867-5309, [stacey.williams@nih.gov](mailto:stacey.williams@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Topics in Health Services Research and Health Informatics.

*Date:* March 23, 2023.

*Time:* 9:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Lauren Susan Penney, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496-1968, [penneyls@csr.nih.gov](mailto:penneyls@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of Cardiovascular and Respiratory Systems.

*Date:* March 23-24, 2023.

*Time:* 9:00 a.m. to 7:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Kimm Hamann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892, (301) 435-5575, [hamannkj@csr.nih.gov](mailto:hamannkj@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Instrumentation, Environmental, and Occupational Safety.

*Date:* March 23-24, 2023.

*Time:* 9:30 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Joonil Seog, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402-9791, [joonil.seog@nih.gov](mailto:joonil.seog@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; PAR-20-117 Maximizing Investigators' Research Award (MIRA) for Early Stage Investigator.

*Date:* March 23-24, 2023.

*Time:* 9:30 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Dennis Pantazatos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-2381, [dennis.pantazatos@nih.gov](mailto:dennis.pantazatos@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Topics in Clinical Informatics and Data Analytics.

*Date:* March 23, 2023.

*Time:* 9:30 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, (301) 996-5819, [zhengli@csr.nih.gov](mailto:zhengli@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflicts: Bioengineering, Biodata, and Biomodeling Technologies.

*Date:* March 23, 2023.

*Time:* 10:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* David R. Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, (301) 435-2902, [filpuladr@mail.nih.gov](mailto:filpuladr@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Virology.

*Date:* March 23, 2023.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Diana Maria Ortiz-Garcia, Ph.D., Scientific Review Officer, The Center for Scientific Review, The National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-5614, [diana.ortiz-garcia@nih.gov](mailto:diana.ortiz-garcia@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowship: Immunology and Infectious Diseases A.

*Date:* March 23-24, 2023.

*Time:* 10:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20876 (Virtual Meeting).

*Contact Person:* Deanna C. Bublitz, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594-4005, [deanna.bublitz@nih.gov](mailto:deanna.bublitz@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel;

Cerebrovascular Disorders and Traumatic Brain Injury.

*Date:* March 23, 2023.

*Time:* 10:30 a.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Paula Elyse Schauwecker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5201, Bethesda, MD 20892, (301) 760-8207, [schauweckerpe@csr.nih.gov](mailto:schauweckerpe@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Cancer Prevention.

*Date:* March 23, 2023.

*Time:* 1:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Lawrence Ka-Yun Ng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, (301) 435-1719, [ngkl@csr.nih.gov](mailto:ngkl@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; NS-22-034: HEAL Meeting.

*Date:* March 23, 2023.

*Time:* 2:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408-9664, [bishopj@csr.nih.gov](mailto:bishopj@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Language, Communication, Vocal Control, and Dysphagia.

*Date:* March 23, 2023.

*Time:* 12:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Sara Louise Hargrave, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, Bethesda, MD 20892, (301) 443-7193, [hargravesl@mail.nih.gov](mailto:hargravesl@mail.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 16, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023-03667 Filed 2-21-23; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Special Emphasis Panel; Ai-ML Tools.  
*Date:* March 13, 2023.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Kimberly Firth, Ph.D., National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301-402-7702, [firthkm@mail.nih.gov](mailto:firthkm@mail.nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 15, 2023.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023-03640 Filed 2-21-23; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: Biobehavioral Processes.

*Date:* March 16-17, 2023.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

*Contact Person:* Jeanne M. McCaffery, Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301-594-3854, [jeanne.mccaffery@nih.gov](mailto:jeanne.mccaffery@nih.gov).

*Name of Committee:* Healthcare Delivery and Methodologies Integrated Review Group; Population and Public Health Approaches to HIV/AIDS Study Section.

*Date:* March 16-17, 2023.

*Time:* 9:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301-435-1137, [guerriej@csr.nih.gov](mailto:guerriej@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Fellowship: HIV Clinical Care and Health Interventions.

*Date:* March 21, 2023.

*Time:* 9:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Jessica Campbell Chambers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496-5693, [jessica.chambers@nih.gov](mailto:jessica.chambers@nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA-NS-

22-026 BRAIN Initiative: Targeted BRAIN Circuits Projects.

*Date:* March 21-22, 2023.

*Time:* 11:00 a.m. to 8:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Kirk Thompson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301-435-1242, [kgt@mail.nih.gov](mailto:kgt@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Motivated Behavior, Alcohol and Neurotoxicology.

*Date:* March 21, 2023.

*Time:* 11:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Brian H. Scott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827-7490, [brianscott@mail.nih.gov](mailto:brianscott@mail.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: HIV/AIDS Interventions and Population and Public Health Approaches.

*Date:* March 21, 2023.

*Time:* 2:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Jessica Campbell Chambers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 496-5693, [jcampbel@csr.nih.gov](mailto:jcampbel@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 15, 2023.

**David W. Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023-03570 Filed 2-21-23; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG–2022–0577]

#### Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625–0027

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0027, Vessel Documentation; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** You may submit comments to the Coast Guard and OIRA on or before March 24, 2023.

**ADDRESSES:** Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at <https://www.regulations.gov>. Search for docket number [USCG–2022–0577]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>.

Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: Commandant (CG–6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995;

44 U.S.C. 3501 *et seq.*, chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection’s purpose, the Collection’s likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2022–0577], and must be received by March 24, 2023.

#### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website’s instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For

more about privacy and submissions to OIRA in response to this document, see the <https://www.reginfo.gov>, comment-submission web page. OIRA posts its decisions on ICRs online at <https://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0027.

#### Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (87 FR 68511, November 15, 2022) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments. Accordingly, no changes have been made to the Collection.

#### Information Collection Request

*Title:* Vessel Documentation.

*OMB Control Number:* 1625–0027.

*Summary:* The information collected will be used to establish the eligibility of a vessel to: (a) be documented as a “vessel of the United States,” (b) engage in a particular trade, and/or (c) become the object of a preferred ship’s mortgage. The information collected concerns citizenship of owner/applicant and build, tonnage and markings of a vessel.

*Need:* 46 U.S.C. chapters 121, 123, 125 and 313 requires the documentation of vessels. A Certificate of Documentation is required for the operation of a vessel in certain trades, serves as evidence of vessel nationality and permits a vessel to be subject to preferred mortgages.

*Forms:*

- CG–1258, Application for Initial, Exchange, or Replacement of Certificate of Documentation; Redocumentation with optional attachments.
- CG–1261, Builder’s Certification and First Transfer of Title.
- CG–1270, Certificate of Documentation.
- CG–1280, Vessel Renewal Notification Application for Renewal.
- CG–1330, Certificate of Ownership of Vessel.
- CG–1332, General Index or Abstract of Title.
- CG–1340, Bill of Sale.
- CG–1356, Bill of Sale by Government Entity Pursuant to Court Order of Administrative Degree of Forfeiture.
- CG–4593, Application, Consent, and Approval for Withdrawal of Application for Documentation or Exchange of Certificate of Documentation.
- CG–5542, Optional Application for Filing.
- CG–7042, Authorization for Credit Card Transactions.

- CG-7043, Abstract of Title/Certified COD Request.

Why is the Coast Guard proposing to add two new forms: The Coast Guard is adding optional forms CG-1330 and CG-1332 to provide a standardized means of delivering information about documented U.S. vessels. A Certificate of Ownership of Vessel (CG-1332) provides the name and official number of a vessel, name and address of the last owner of record, the Certificate of Documentation expiration date, any outstanding mortgages, preferred mortgages, and notice of lien.

Additionally, it lists any pending application and or instruments filed. A General Index or Abstract of Title (CG-1330) contains information concerning build, ownership, and encumbrances or liens filed and recorded against a vessel.

**Respondents:** Owners/builders of yachts and commercial vessels of at least 5 net tons.

**Frequency:** Annually, and on occasion.

**Hour Burden Estimate:** The estimated burden has increased from 50,844 hours to 84,443 hours, due to an increase in the estimated number of responses. In addition, the estimated burden has increased by 5,883 hours, due to the addition of two new optional forms—CG-1330, Certificate of Ownership of Vessel and CG-1332, General Index or Abstract of Title. The total estimated burden is 90,326 hours.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: January 24, 2023.

**Kathleen Claffie,**

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2023-03643 Filed 2-21-23; 8:45 am]

BILLING CODE 9110-04-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2022-0578]

#### Collection of Information Under Review by Office of Management and Budget; OMB Control Number 1625-0028

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office

of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625-0028, Course Approval and Records for Merchant Mariner Training Schools; without change. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** You may submit comments to the Coast Guard and OIRA on or before March 24, 2023.

**ADDRESSES:** Comments to the Coast Guard should be submitted using the Federal eRulemaking Portal at <https://www.regulations.gov>. Search for docket number [USCG-2022-0578]. Written comments and recommendations to OIRA for the proposed information collection should be sent within 30 days of publication of this notice to <https://www.reginfo.gov/public/do/PRAMain>.

Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: COMMANDANT (CG-6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593-7710.

**FOR FURTHER INFORMATION CONTACT:** A.L. Craig, Office of Privacy Management, telephone 202-475-3528, or fax 202-372-8405, for questions on these documents.

#### SUPPLEMENTARY INFORMATION:

##### Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.*, chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection’s purpose, the Collection’s likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate

comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG-2022-0578], and must be received by March 24, 2023.

#### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website’s instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments to the Coast Guard will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions to the Coast Guard in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020). For more about privacy and submissions to OIRA in response to this document, see the <https://www.reginfo.gov>, comment-submission web page. OIRA posts its decisions on ICRs online at <https://www.reginfo.gov/public/do/PRAMain> after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625-0028.

#### Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (87 FR 68510, November 15, 2022) required by 44 U.S.C. 3506(c)(2). That notice elicited no comments.

Accordingly, no changes have been made to the Collection.

### Information Collection Request

*Title:* Course Approval and Records for Merchant Mariner Training Schools.

*OMB Control Number:* 1625–0028.

*Summary:* The information is needed to ensure that merchant marine training schools meet minimal statutory requirements. The information is used to approve the curriculum, facility and faculty for these schools.

*Need:* 46 U.S.C. 7315 authorizes an applicant for a Merchant Mariner Credential to substitute the completion of an approved course for a portion of the required sea service. 46 CFR 10.402 contains the Coast Guard regulations for course approval.

*Forms:* None.

*Respondents:* Merchant marine training schools.

*Frequency:* Five years for reporting, one year for recordkeeping.

*Hour Burden Estimate:* The estimated burden remains 145,917 hours a year.

*Authority:* The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: January 24, 2023.

**Kathleen Claffie,**

*Chief, Office of Privacy Management, U.S. Coast Guard.*

[FR Doc. 2023–03642 Filed 2–21–23; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID: FEMA–2022–0041; OMB No. 1660–0100]

#### Agency Information Collection Activities: Submission for OMB Review, Comment Request; General Admissions Applications (Long and Short) and Stipend Forms

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** 30 Day notice of revision and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission seeks comments concerning the admission applications and student stipend agreements for FEMA courses

and programs that are delivered on-campus and throughout the Nation, in coordination with state and local training officials and local colleges and universities.

**DATES:** Comments must be submitted on or before March 24, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address: [FEMA-Information-Collections-Management@fema.dhs.gov](mailto:FEMA-Information-Collections-Management@fema.dhs.gov) or Smiley White, Supervisory Program Specialist, United States Fire Administration, at [Smiley.White@fema.dhs.gov](mailto:Smiley.White@fema.dhs.gov) or 301–447–1055.

**SUPPLEMENTARY INFORMATION:** FEMA offers courses and programs that are delivered at National Emergency Training Center (NETC) in Emmitsburg, Maryland, the Center for Domestic Preparedness (CDP) in Anniston, Alabama, and throughout the Nation in coordination with state and local training officials and local colleges and universities to carry out the authorities listed below. To facilitate meeting these requirements, FEMA collects information necessary to be accepted for courses and for the student stipend or travel reimbursement program for these courses. There are several organizations within FEMA that deliver training and education in support of the FEMA mission.

1. Section 7 of Public Law 93–498, the Federal Fire Prevention and Control Act, as amended, 15 U.S.C. 2206, established the National Fire Academy (NFA) to advance the professional development of fire service personnel and of other persons engaged in fire prevention and control activities.

2. Section 611(f) of Public Law 93–288, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. 5196(f), authorizes FEMA to conduct or arrange, by contract or otherwise, training programs for the instruction of emergency preparedness officials and other persons in the organization, operation, and techniques of emergency preparedness; conduct or operate schools or classes, including the

payment of travel expenses and per diem allowances for these purposes, in lieu of subsistence for trainees in attendance or the furnishing of subsistence and quarters for trainees and instructors on terms prescribed by the Administrator and provide necessary. This training is conducted through the Emergency Management Institute (EMI).

3. Title XIV of the National Defense Authorization Act of 1997, Public Law 104–201, 110 Stat. 2432; title I of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998, Public Law 105–119, 111 Stat. 2440; sections 403 and 430 of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135; and section 611 of the Post-Katrina Emergency Management Reform Act of 2006, Public Law 109–295, 120 Stat. 1355, all authorize CDP to serve as a training facility for all relevant Federally supported training efforts that target state and local law enforcement, firefighters, emergency medical personnel, and other key agencies such as public works and state and local emergency management. The focus of the training is to prepare relevant state and local officials to deal with chemical, biological, or nuclear terrorist acts and handle incidents dealing with hazardous materials.

4. Public Law 110–53, the Implementing Recommendations of the 9/11 Commission Act of 2007, 6 U.S.C. 1102, established a National Domestic Preparedness Consortium within the Department of Homeland Security. The Consortium is mandated to identify, test, and deliver training to state, local, and tribal emergency response providers, provide on-site and mobile training at the performance, management, and planning levels, and facilitate the delivery of training by the training partners of the Department.

5. Consistent with requirements under Occupational Safety and Health Administration (OSHA) Appendix C Respirator Medical Evaluation Questionnaire (29 CFR 1910.134, Respiratory Protection), in any workplace where respirators are necessary to protect the health of the employee or whenever respirators are required by the employer, the employer shall establish and implement a written respiratory protection program with worksite-specific procedures. The program shall be updated as necessary to reflect those changes in workplace conditions that affect respirator use. The employer shall include in the program the following provisions of this section,



as applicable: 1910.134(c)(1)(ii) Medical evaluations of employees required to use respirators.

FEMA is revising this collection to add a new instrument, FEMA Form FF-008-FY-22-125, Respiratory Medical Evaluation Questionnaire For Students, to comply with OSHA's requirements under 29 CFR 1910.134.

This proposed information collection previously published in the **Federal Register** on November 25, 2022, at 87 FR 72495 with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

### Collection of Information

*Title:* General Admissions Applications (Long and Short) and Stipend Forms.

*Type of Information Collection:* Revision of a currently approved information collection.

*OMB Number:* 1660-0100.

*FEMA Forms:* FEMA Form FF-USFA-FY-21-101 (formerly 119-25-0-1), General Admissions Application; FEMA Form FF-USFA-FY-21-102 (formerly 119-25-0-6), Training Registration Form; FEMA Form FF-USFA-FY-21-103 (formerly 119-25-3), Student Stipend Agreement; FEMA Form FF-USFA-FY-21-104 (formerly 119-25-4), Student Stipend Agreement (Amendment); FEMA Form FF-USFA-FY-21-105 (formerly 119-25-5), National Fire Academy Executive Fire Officer Program Application Admission; and FEMA Form FF-008-FY-22-125, Respiratory Medical Evaluation Questionnaire For Students.

*Abstract:* FEMA provides training to advance the professional development of personnel engaged in fire prevention and control and emergency management activities through CDP, Emergency Management Institute, NFA, National Training and Education Division, National Domestic Preparedness Consortium, and Rural Domestic Preparedness Consortium.

*Affected Public:* Business or other for-profit, not-for-profit institutions, Federal Government, and State, local or Tribal government.

*Number of Respondents:* 223,300.

*Number of Responses:* 223,300.

*Estimated Total Annual Burden*

*Hours:* 21,644.

*Estimated Total Annual Respondent Cost:* \$1,204,641.

*Estimated Respondents' Operation and Maintenance Costs:* \$0.

*Estimated Respondents' Capital and Start-Up Costs:* \$0.

*Estimated Total Annual Cost to the Federal Government:* \$252,825.

### Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Millicent Brown Wilson,**

*Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2023-03608 Filed 2-21-23; 8:45 am]

**BILLING CODE 9111-74-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID FEMA-2022-0052; OMB No. 1660-0069]

#### Agency Information Collection Activities: Submission for OMB Review, Comment Request; National Fire Incident Reporting System (NFIRS) Version 5.0

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** 30-Day notice of revision and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of the respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost,

and the actual data collection instruments FEMA will use.

**DATES:** Comments must be submitted on or before March 24, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C St. SW, Washington, DC 20472, email address: [FEMA-Information-Collections-Management@fema.dhs.gov](mailto:FEMA-Information-Collections-Management@fema.dhs.gov) or David Millstein, Branch Chief National Fire Data Center, (301) 447-1841 or [david.millstein@fema.dhs.gov](mailto:david.millstein@fema.dhs.gov).

**SUPPLEMENTARY INFORMATION:** The National Commission on Fire Prevention and Control conducted a comprehensive study of the Nation's fire problem and recommended to Congress actions to mitigate the fire problem, reduce loss of life and property, and educate the public on fire protection and prevention. As a result of the study, Congress enacted Public Law 93-498, Federal Fire Prevention and Control Act of 1974, which establishes the U.S. Fire Administration (USFA) to administer fire prevention and control programs, supplement existing programs of research, training, and education, and encourage new and improved programs and activities by state and local governments. Section 9(a) of the Act authorizes the USFA Administrator to operate directly or through contracts or grants an integrated, comprehensive method to select, analyze, publish, and disseminate information related to prevention, occurrence, control, and results of fires of all types. The National Fire Incident Reporting Systems (NFIRS) was established in the mid-1970s and is mandated by the Federal Fire Prevention and Control Act of 1974 which authorizes the National Fire Data Center to gather and analyze information such as: (1) the frequency, causes, spread, and extinguishment of fires; (2) injuries and deaths resulting from fires; (3) information on injuries sustained by a firefighter; and (4) information on firefighting activities. The act further authorizes USFA to develop uniform data reporting methods, and to encourage and assist Federal, state, local and other agencies in developing and reporting



information. NFIRS is a reporting standard that fire departments use to uniformly report on the full range of their activities, from fire to emergency medical services to severe weather and natural disasters. This reporting allows fire departments, as well as many other government and non-government agencies, to quantify their actions and identify incident and response trends. Recent modernization to the data collection improved and therefore reduced the burden hours for reporting data to NFIRS. FEMA is requesting a revision of this information collection.

This proposed information collection previously published in the **Federal Register** on December 9, 2022, at 87 FR 75642 with a 60-day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

### Collection of Information

*Title:* National Fire Incident Reporting System (NFIRS) Version 5.0.

*Type of Information Collection:* Extension, with change, of a currently approved information collection.

*OMB Number:* 1660-0069.

*FEMA Forms:* FEMA Form FF-USFA-FY-21-109, National Fire Incident Reporting System (NFIRS) Version 5.0.

*Abstract:* The purpose of this revision is to provide the reduction of burden hours recently achieved by modernizing and improving the application's interface. NFIRS is the USFA's system authorized under Public Law 93-498 to collect fire related data to identify and define the fire problem in the U.S., and to reduce fire related casualties and losses. Operating since 1999, the system provides an electronic, web-based application for users to input their incident response information in a uniform manner.

*Affected Public:* Individuals or households; State, local or Tribal government.

*Estimated Number of Respondents:* 23,500.

*Estimated Number of Responses:* 28,059,000.

*Estimated Total Annual Burden Hours:* 9,820,650.

*Estimated Total Annual Respondent Cost:* \$420,225,614.

*Estimated Respondents' Operation and Maintenance Costs:* \$1,974,000.

*Estimated Respondents' Capital and Start-Up Costs:* \$1,128,000.

*Estimated Total Annual Cost to the Federal Government:* \$3,436,118.

### Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Millicent Brown Wilson,**

*Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2023-03617 Filed 2-21-23; 8:45 am]

**BILLING CODE 9111-76-P**

### DEPARTMENT OF HOMELAND SECURITY

#### Federal Emergency Management Agency

[Docket ID: FEMA-2022-0040; OMB No. 1660-0076]

#### Agency Information Collection Activities: Submission for OMB Review, Comment Request; Hazard Mitigation Grant Program (HMGP) Application Reporting

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** 30 Day notice of revision and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission seeks comments regarding the requirements, grants management procedures, and implementation of grants awarded under the Hazard Mitigation Grant Program (HMGP), which is a post-disaster program that contributes funds toward the cost of

hazard mitigation activities to reduce the risk of future damage, hardship, loss or suffering in any area affected by a major disaster.

**DATES:** Comments must be submitted on or before April 24, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address: [FEMA-Information-Collections-Management@fema.dhs.gov](mailto:FEMA-Information-Collections-Management@fema.dhs.gov) or Jennie Orenstein, Chief, HMA Grants Policy Branch, at (202) 212-4071 or [jennie.gallardy@fema.dhs.gov](mailto:jennie.gallardy@fema.dhs.gov).

**SUPPLEMENTARY INFORMATION:** Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170c, authorizes the Hazard Mitigation Grant Program (HMGP). Program grant requirements and grants management procedures are outlined in 44 CFR part 206 Subpart N, and 2 CFR parts 200 and 3002. The Federal Emergency Management Agency (FEMA) administers the HMGP, and Recipients implement the grants under the HMGP per grant agreement, rules, and regulations. The HMGP is a post-disaster program that contributes funds toward the cost of hazard mitigation activities to reduce the risk of future damage, hardship, loss or suffering in any area affected by a major disaster or any area affected by a fire for which assistance was provided under section 420 of the Stafford Act (42 U.S.C. 5187). Section 102 of the Stafford Act (42 U.S.C. 5122(4)) defines a "state" as any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the commonwealth of the Northern Mariana Islands. "Recipient", as provided in 2 CFR 200, means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program, or an Indian tribal government that chooses to act as a recipient rather than as a subrecipient. "Subrecipient" refers to a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of

such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. The term “Indian tribal government” is defined in section 102 of the Stafford Act, 42 U.S.C. 5122(6), as the governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe under the Federally Recognized Indian Tribe List Act of 1994. In addition, the Sandy Recovery Improvement Act of 2013 (Pub. L. 113–2, 42 U.S.C. 5170(b)) amended the Stafford Act to allow the Chief Executive of a federally recognized Indian tribe to make a direct request for a major disaster or emergency declaration to the President of the United States.

The Department of Homeland Security (DHS) adopted in its entirety the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) on December 26, 2014, at 2 CFR part 3002, (79 FR 75867, December 19, 2014). This rule eliminates overlapping and duplicative requirements for stakeholders, including states, territories and Indian tribal governments, by using general terms such as “recipient” and “pass-through entity.”

The HMGP regulation describes the application process in 44 CFR 206.436. Information collected through the financial award application is the minimum information necessary for the financial award administration under the HMGP and includes the project narrative, analysis of the measure’s cost-effectiveness referred to as the benefit-cost determination, and environmental review used in conjunction with OMB No. 1660–0025.

44 CFR 206.436(d) states: “The State must submit all local HMGP applications and funding requests for the purpose of identifying new projects to the Regional Administrator within 12 months of the date of disaster declaration.” Furthermore, section 311 of the DHS Appropriations Act, 2022 (Pub. L. 117–103, 136 Stat. 331) states: “beginning between January 1, 2020, and December 31, 2021, the Federal share of assistance, including direct Federal assistance, provided under such sections shall be not less than 90 percent of the eligible cost of such assistance.” The legislation applies to all current FY 2022 HMGP local and Tribal sub applicants and significantly alters application and program financial management information collection requirements. The DHS Appropriations Act, 2022 does not provide additional

funding for HMGP COVID–19 relief beyond the already established \$3.46 billion.

Per 44 CFR 206.438(c), progress reports must be submitted by the HMGP Recipient to the Regional Administrator on a quarterly basis, certifying how the funds are being used and reporting on the progress of activities funded under the subrecipient awards made to the Recipient by FEMA. The Regional Administrator and Recipient negotiate the date for submission of the first report. Quarterly progress reports describe the status of those projects on which a final payment of the Federal share has not been made to the recipient, and outline any problems or circumstances expected to result in noncompliance with the approved award conditions.

The legislative changes are expected to trigger a significant increase in requests by local subapplicants who have not yet developed FY 2022 project applications. The requests will likely extend the application deadline beyond the standard 12-month deadline of August 5, 2022. Applications Period extension requests, authorized under 44 CFR 206.436(e), may add additional information collection burden.

The Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act) (Pub. L. 115–435, 5 U.S.C. 311–315) establishes evaluation using systematic data collection and analysis of programs, policies, and organizations intended to assess their effectiveness and efficiency as an essential program activity. Hazard Mitigation programs are currently revising information collections to simply data collection, reduce burden, coordinate data collection across programs, develop performance metrics, and meet goals and priorities as stipulated in the Evidence Act. Program implementation of the Evidence Act will necessitate changes to information collections. Additionally, the Build America, Buy America Act (BABAA) (Pub. L. 117–58, 70901–70927) and Executive Order (E.O.) 14008, *Tackling the Climate Crisis At Home and Abroad*, (86 FR 7619, February 1, 2021) establishes additional information collection requirements, goals and priorities.

This proposed information collection previously published in the **Federal Register** on November 23, 2022, at 87 FR 71659 with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

## Collection of Information

*Title:* Hazard Mitigation Grant Program (HMGP) Application and Reporting.

*Type of Information Collection:* Extension, with change, of a currently approved information collection.

*OMB Number:* OMB No. 1660–0076.

*FEMA Forms:* Project Narrative; Benefit-Cost Determination; Environmental Review; FEMA Form FF–206–FY–22–154 (formerly 009–0–111A), Quarterly Progress Reports.

*Abstract:* The Federal Emergency Management Agency (FEMA) administers the Hazard Mitigation Grant Program, which is a post-disaster program that contributes funds toward the cost of hazard mitigation activities to reduce the risk of future damage hardship, loss or suffering in any area affected by a major disaster. FEMA uses applications to provide financial assistance in the form of grant awards and, through grantee quarterly reporting, monitor grantee project activities and expenditure of funds.

*Affected Public:* State, Local, or Tribal Governments.

*Estimated Number of Respondents:* 236.

*Estimated Number of Responses:* 10,891.

*Estimated Total Annual Burden Hours:* 100,280.

*Estimated Total Annual Respondent Cost:* \$6,141,147.

*Estimated Respondents’ Operation and Maintenance Costs:* \$0.

*Estimated Respondents’ Capital and Start-Up Costs:* \$0.

*Estimated Total Annual Cost to the Federal Government:* \$2,318,946.

## Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

**Millicent Brown Wilson,**

*Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2023-03610 Filed 2-21-23; 8:45 am]

BILLING CODE 9111-BW-P

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

[Docket ID: FEMA-2022-0036; OMB No. 1660-0083]

**Agency Information Collection Activities: Submission for OMB Review, Comment Request; Application for Community Disaster Loan (CDL) Program**

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** 30 Day notice of revision and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of the respondents, the estimated burden (i.e., the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

**DATES:** Comments must be submitted on or before March 24, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C St. SW, Washington, DC 20472, email address: [FEMA-Information-Collections-Management@fema.dhs.gov](mailto:FEMA-Information-Collections-Management@fema.dhs.gov) or Martha Castro, Program Manager, FEMA at 202-

212-5761 or [Martha.Castro@fema.dhs.gov](mailto:Martha.Castro@fema.dhs.gov).

**SUPPLEMENTARY INFORMATION:** The information collection is required for Community Disaster Loan (CDL) Program eligibility determinations, CDL management, and compliance with other federal laws and regulations. The CDL Program is authorized by section 417 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93-288, as amended, 42 U.S.C. 5184) and implementing regulations at 44 CFR part 206, subpart K. FEMA may make a CDL to any local government which has suffered a substantial loss of tax or other revenues, as a result of a major disaster or emergency, and which demonstrates a need for Federal financial assistance to perform its governmental functions.

The CDL must be justified on the basis of need and be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and the three succeeding fiscal years. FEMA has the authority to cancel repayment of all or part of these CDLs to the extent that a determination is made that revenues of the local government during the three fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster related revenue losses and additional unreimbursed disaster-related municipal operating expenses.

FEMA reviewed the forms included in this collection and found that FEMA Form 090-0-4 (Letter of Application) presented difficulties for the local governments. FEMA found a simpler way to fulfill the regulatory requirement by using a template letter. Therefore, FEMA Form 090-0-4 (Letter of Application) will no longer be part of this collection.

This proposed information collection previously published in the **Federal Register** on November 15, 2022, at 87 FR 68513 with a 60-Day public comment period. FEMA received two comments.

The first comment suggested simplifying the CDL application. To minimize both effort and time required to complete this loan application, the CDL Program has simplified the application process and paperwork to the least amount of effort possible. Additionally, the CDL Program assists local governments through the entire process, even post loan issuance. Once information has been obtained from the potential applicant, the CDL Program completes a financial analysis, fills forms, and then provides the pre-filled

forms to the applicants for them to read, print, and sign.

The second comment received suggested not using Federal tax-payer dollars to rebuild in known hazard areas. By statute, FEMA is authorized to provide financial assistance for local governments to cover operational expenses. Local governments cannot use the financial assistance for capital improvements. Rebuilding is considered a capital expense and therefore an ineligible use of these CDL funds. Relocation is also an ineligible use of the loaned funds. The CDL Program validates that loans were used only for eligible uses.

The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

**Collection of Information**

*Title:* Application for Community Disaster Loan (CDL) Program.

*Type of Information Collection:* Extension, with change, of a currently approved information collection.

*OMB Number:* 1660-0083.

*FEMA Forms:* FEMA Form FF-104-FY-22-223 (formerly 090-0-1), Certification of Eligibility for Community Disaster Loans; FF-104-FY-22-224 (formerly 116-0-1), Promissory Note; FF-104-FY-22-225 (formerly 085-0-1), Local Government Resolution—Collateral Security; FF-104-FY-22-226 (formerly 112-0-3C), Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters, and Drug-Free Workplace Requirements; FF-104-FY-22-227 (formerly 009-0-15), Application for Loan Cancellation.

*Abstract:* The loan package for the CDL Program provides local governments that have suffered substantial loss of tax or other revenues as a result of a major disaster, the opportunity to obtain financial assistance in order to perform their governmental functions. The loan must be justified on the basis of need and actual expenses.

*Affected Public:* State, local, or Tribal government.

*Estimated Number of Respondents:* 260.

*Estimated Number of Responses:* 260.

*Estimated Total Annual Burden*

*Hours:* 552.

*Estimated Total Annual Respondent Cost:* \$25,800.

*Estimated Respondents' Operation and Maintenance Costs:* 0.

*Estimated Respondents' Capital and Start-Up Costs:* 0.

*Estimated Total Annual Cost to the Federal Government:* \$1,061,916.

**Comments**

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Millicent Brown Wilson,**

*Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2023-03612 Filed 2-21-23; 8:45 am]

**BILLING CODE 9111-24-P**

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[Docket ID FEMA-0022-0047; OMB No. 1660-0118]

**Agency Information Collection Activities: Submission for OMB Review, Comment Request; Homeland Security Exercise and Evaluation Program (HSEEP) Documentation**

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** 30-Day notice of revision and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of the respondents, the estimated burden (i.e. the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

**DATES:** Comments must be submitted on or before March 24, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C St. SW, Washington, DC 20472, email address: [FEMA-Information-Collections-Management@fema.dhs.gov](mailto:FEMA-Information-Collections-Management@fema.dhs.gov) or Kristen Fish, Supervisory Emergency Management Specialist, [Kristen.Fish@fema.dhs.gov](mailto:Kristen.Fish@fema.dhs.gov) or (202) 412-0882.

**SUPPLEMENTARY INFORMATION:** Presidential Policy Directive 8 (PPD-8: National Preparedness), issued on March 30, 2011, establishes a National Preparedness Goal (NPG) that identifies the core capabilities necessary for preparedness and a National Preparedness System (NPS) which guides activities to enable the Nation to achieve the NPG. The NPS allows the Nation to track the progress of our ability to build and improve the capabilities necessary to prevent, protect against, mitigate the effects of, respond to, and recover from those threats that pose the greatest risk to the security of the Nation.

The NPS provides an integrated approach to preparedness that can be implemented and measured at all levels of government. This system is an all-of-Nation and whole community approach to preparedness, from neighborhood organizations to civic groups and private businesses. It contains a methodical approach integrated across the preparedness cycle and links together programs and requirements into a comprehensive system, driving rational decision-making and allowing for a direct and defensible assessment of progress against clearly defined objectives.

The NPS is based on a consistent methodology for assessing the threats and hazards facing a given jurisdiction. The findings of the assessment drive planning factors and all other components of the preparedness cycle including resource requirements, existing capabilities and capability gaps, driving investments to close those gaps, making and validating improvements in capabilities through training and

exercising, and continually assessing progress.

Section 648(b)(1) of the Post-Katrina Emergency Management Reform Act of 2006 (6 U.S.C. 748(b)(1)) also provides for these exercises and states the Administrator "shall carry out a national exercise program to test and evaluate the national preparedness goal, National Incident Management System, National Response, and other related plans and strategies." The Homeland Security Exercise and Evaluation Program (HSEEP) provides the program structure, multi-year planning system, tools, and guidance necessary for entities to build and sustain exercise programs that enhance homeland security capabilities, and ultimately, preparedness. The HSEEP After Action Report Improvement, Integrated Preparedness Plan, and National Exercise Program Support Request Forms provide the standardized methods for reporting the results of exercises, identifying exercise program priorities, and submitting exercise nominations necessary to validate national preparedness capabilities.

This proposed information collection previously published in the **Federal Register** on December 9, 2022, at 87 FR 75641 with a 60-day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

**Collection of Information**

**Title:** Homeland Security Exercise and Evaluation Program (HSEEP) Documentation.

**Type of Information Collection:** Extension, with change, of a currently approved information collection.

**OMB Number:** 1660-0118.

**FEMA Forms:** FEMA Form FF-008-FY-21-102 (formerly 091-0-1), After Action Report/Improvement Plan (AAR/IP); FEMA Form FF-008-FY-21-100 (formerly 008-0-26), Integrated Preparedness Plan (IPP); and FEMA Form FF-008-FY-21-101 (formerly 008-0-27), National Exercise Program (NEP) Support Request Form.

**Abstract:** The Homeland Security Exercise and Evaluation Program (HSEEP) Documentation collection provides reporting on the results of preparedness exercises and provides assessments of the respondents' capabilities so that strengths and areas for improvement are identified, corrected, and shared as appropriate prior to a real incident. This information is also required to be submitted as part of certain FEMA grant programs.

*Affected Public:* State, Local, or Tribal Governments.

*Estimated Number of Respondents:* 253.

*Estimated Number of Responses:* 471.

*Estimated Total Annual Burden*

*Hours:* 14,458.

*Estimated Total Annual Respondent Cost:* \$794,901.

*Estimated Respondents' Operation and Maintenance Costs:* 0.

*Estimated Respondents' Capital and Start-Up Costs:* 0.

*Estimated Total Annual Cost to the Federal Government:* \$73,630.

## Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Millicent Brown Wilson,**

*Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2023-03616 Filed 2-21-23; 8:45 am]

**BILLING CODE 9111-1A-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID: FEMA-2022-0049; OMB No. 1660-0006]

### Agency Information Collection Activities: Submission for OMB Review, Comment Request; National Flood Insurance Program Policy Forms

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** 30 Day notice of revision and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission seeks comments concerning information collected for the selling and servicing of National Flood Insurance Program (NFIP) policies by FEMA's direct servicing agent, NFIP Direct.

**DATES:** Comments must be submitted on or before March 24, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address: [FEMA-Information-Collections-Management@fema.dhs.gov](mailto:FEMA-Information-Collections-Management@fema.dhs.gov) or Joycelyn Collins, Underwriting Branch Program Analyst, Federal Insurance Directorate, at 202-701-3383 or [Joycelyn.Collins@fema.dhs.gov](mailto:Joycelyn.Collins@fema.dhs.gov).

**SUPPLEMENTARY INFORMATION:** The NFIP is authorized by Public Law 90-448 (1968) and expanded by Public Law 93-234 (1973). The National Flood Insurance Act of 1968 requires FEMA to provide flood insurance at full actuarial rates, reflecting the complete flood risk to structures built or substantially improved, on or after the effective date for the initial Flood Insurance Rate Map for the community, so that the risks associated with buildings in flood-prone areas are borne by those located in such areas and not by taxpayers at large. In accordance with Public Law 93-234, the purchase of flood insurance is mandatory when Federal or federally related financial assistance is being provided for acquisition or construction of buildings located, or to be located, within FEMA-identified special flood hazard areas of communities that participate in the NFIP.

FEMA also proposes changes to this information collection to implement a revised risk rating methodology that will apply to all policies issued or renewed on or after October 1, 2021. This revised methodology will require FEMA to collect new information necessary to sell and service flood

insurance policies. However, the revised methodology is not expected to increase the overall information collection burden on the public due to the use of data from sources other than policyholders. As a result of this revised methodology, FEMA proposes to modify FEMA Forms FF-206-FY-21-117 (formerly 086-0-1), FF-206-FY-21-118 (formerly 086-0-2), and FF-206-FY-21-119 (formerly 086-0-3).

During the transition to the revised rating methodology, FEMA still needed to maintain the existing forms in this information collection. As a result, FEMA added FEMA Forms 086-0-1T, 086-0-2T, 086-0-3T, and 086-0-5T to this information collection. Now that the transition to the revised risk rating methodology has been completed, effective April 1, 2022, FEMA has discontinued the use of these forms and is removing them from this information collection.

This proposed information collection previously published in the **Federal Register** on December 7, 2022, at 87 FR 75060 with a 60 day public comment period. One complimentary comment was received and FEMA thanks the commentor. This notice also corrects a minor typographical error in the previously published notice, which listed the number of respondents as 372,522 when the correct number of respondents is 372,422. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

### Collection of Information

*Title:* National Flood Insurance Program Policy Forms.

*Type of Information Collection:* Extension, with change, of a currently approved information collection.

*OMB Number:* 1660-0006.

*FEMA Forms:* FEMA Form FF-206-FY-21-117 (formerly 086-0-1), Flood Insurance Application; FEMA Form FF-206-FY-21-118 (formerly 086-0-2), Flood Insurance Cancellation/Nullification Request Form; and FEMA Form FF-206-FY-21-119 (formerly 086-0-3), Flood Insurance General Change Endorsement.

*Abstract:* To provide for the availability of policies for flood insurance, policies are marketed and administered through the facilities of licensed insurance agents or brokers in the various States. Applications, general change requests, and cancellations from agents or brokers are forwarded to a direct servicing agent designated as fiscal agent by the Federal Insurance and Mitigation Administration (FIMA),

referred to as NFIP Direct. Upon receipt and examination of the application, general change request, cancellation, and required premium, the servicing company issues or updates the appropriate Federal flood insurance policy.

*Affected Public:* Individuals or households; State, local or Tribal government; business or other for profit; not-for-profit institutions; and farms.

*Number of Respondents:* 372,422.

*Number of Responses:* 372,422.

*Estimated Total Annual Burden Hours:* 51,628.

*Estimated Total Annual Respondent Cost:* \$2,096,612.

*Estimated Respondents' Operation and Maintenance Costs:* \$0.

*Estimated Respondents' Capital and Start-Up Costs:* \$0.

*Estimated Total Annual Cost to the Federal Government:* \$9,357,010.

## Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to: (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

## Millicent Brown Wilson,

*Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2023-03607 Filed 2-21-23; 8:45 am]

BILLING CODE 9111-52-P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID: FEMA-2022-0045; OMB No. 1660-0098]

### Agency Information Collection Activities: Submission for OMB Review, Comment Request; FEMA Citizen Responder Programs Registration

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** 30 Day notice of revision and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission seeks comments concerning FEMA's Citizen Responder programs registration. These programs include Community Emergency Response Teams (CERTs) and Citizen Corps Councils.

**DATES:** Comments must be submitted on or before March 24, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address: [FEMA-Information-Collections-Management@fema.dhs.gov](mailto:FEMA-Information-Collections-Management@fema.dhs.gov) or Andy Burrows, Branch Chief, Preparedness Behavior Change Branch, Individual and Community Preparedness Division, FEMA, 400 C Street SW, Washington, DC 20024, 202-716-0527, [andrew.burrows@fema.dhs.gov](mailto:andrew.burrows@fema.dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Post Katrina Management Reform Act (PKEMRA), codified within title 6 U.S.C. requires the FEMA Administrator to provide Federal leadership necessary to prepare for, protect against, respond to, recover from or mitigate against a natural disaster, act of terrorism, or other man-made disaster. This

responsibility includes planning, training, and building the emergency management profession by building a comprehensive incident management system with Federal, state, and local government personnel, agencies and authorities, and helping the emergency response providers to effectively respond. See 6 U.S.C. 314. As part of this responsibility to help and support emergency response providers, FEMA supports efforts to train and assist in organizing citizen responder programs. With E.O. 13254, *Establishing the USA Freedom Corps* (67 FR 4869, Feb. 1, 2002) Citizen Corps was launched as a Presidential Initiative on January 29, 2002, with a mission to harness the power of every individual through education, training, and volunteer service to make communities safer, stronger, and better prepared for the threats of terrorism, crime, public health issues, and disasters of all kinds.

Another FEMA Citizen Responder program, the CERT was originally developed and implemented by the Los Angeles City Fire Department in 1985. Since 1993 when this training was made available nationally by FEMA, communities in 28 states and Puerto Rico have conducted CERT training. FEMA supports CERT by conducting or sponsoring Train-the-Trainer and Program Manager courses for members of the fire, medical and emergency management community.

To fulfill its mission, FEMA's Individual and Community Preparedness Division (ICPD) will collect information from Citizen Corps Councils and CERT Programs through the Citizen Responder online registration form. The Citizen Responder registration form will allow FEMA as well as state, local, Tribal and territorial personnel to evaluate whether prospective Councils/CERTs have the support of the appropriate government officials in their area, ensure a dedicated coordinator is assigned to the program, and provide an efficient way to track the effectiveness of the nationwide network of Councils and CERT programs.

This proposed information collection previously published in the **Federal Register** on December 5, 2022, at 87 FR 74434 with a 60-day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

## Collection of Information

*Title:* FEMA Citizen Responder Programs Registration.

*Type of Information Collection:* Extension, with change, of a currently approved information collection.

*OMB Number:* 1660-0098.

*FEMA Forms:* FEMA Form FF-008-FY-22-129 (formerly 008-0-25), Citizen Corps Council—CERT Registration.

*Abstract:* The FEMA Citizen Responder registration form will allow FEMA as well as state, local, Tribal and territorial personnel to evaluate whether prospective Councils/CERTs have the support of the appropriate government officials in their area, ensure a dedicated coordinator is assigned to the program, and provide an efficient way to track the effectiveness of the nationwide network of Councils and CERT programs.

*Affected Public:* Individuals and households.

*Estimated Number of Respondents:* 4,000.

*Estimated Number of Responses:* 4,000.

*Estimated Total Annual Burden Hours:* 1,000.

*Estimated Total Annual Respondent Cost:* \$40,610.

*Estimated Respondents' Operation and Maintenance Costs:* \$0.

*Estimated Respondents' Capital and Start-Up Costs:* \$0.

*Estimated Total Annual Cost to the Federal Government:* \$13,205.

## Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Millicent Brown Wilson,**

*Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2023-03614 Filed 2-21-23; 8:45 am]

**BILLING CODE 9111-27-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA-2022-0044; OMB No. 1660-0029]**

### Agency Information Collection Activities: Submission for OMB Review, Comment Request; Request for Use of NETC Facilities

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** 30 Day notice of revision and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission seeks comments concerning the removal of use of the FEMA Form FF-USFA-FY-21-108 (formerly 119-17-2), Request for Use of National Emergency Training Center Facilities, due to its antiquated information collection method and requirement. There is no longer a need to formally require the use of this form in order for a requestor to receive support for special groups using the National Emergency Training Center.

**DATES:** Comments must be submitted on or before March 24, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address: [FEMA-Information-Collections-Management@fema.dhs.gov](mailto:FEMA-Information-Collections-Management@fema.dhs.gov) or Merrill Sollenberger, Administrative Specialist, FEMA, U.S. Fire Administration, 301-447-1179, or at [merril.sollenberger@fema.dhs.gov](mailto:merril.sollenberger@fema.dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5121-5207) authorizes the President to establish a program of

disaster preparedness that utilizes services of all appropriate agencies and includes training and exercises. Section 611 of the Stafford Act (42 U.S.C. 5196) provides that the Federal Emergency Management Agency (FEMA) may conduct training for the purpose of emergency preparedness. In response, FEMA established the National Emergency Training Center (NETC), located in Emmitsburg, Maryland. The NETC site has facilities and housing available for those participating in preparedness training and a request for use of these areas is required to be made in advance for the need for such. The primary means of making advanced requests for use of space at NETC is the use of email communication and this typically includes the specifics for the use of NETC for date of arrival and departure, how many participants, the requirement for lodging to include how many people, room space required, meals required, and equipment needed. These items that were required to be captured by completing the Request For Use of NETC Facilities Form are now captured within the content of the email communication. The secondary means of making requests to use NETC space is by telephone communication and those requirements are discussed in that manner.

The NETC is a FEMA facility which houses all FEMA employees at headquarters, regions, field establishments, and other individuals and organizations authorized to use the facilities. The responsibilities, procedures, and potential fees charged for using the NETC facilities are identified in accordance with FEMA Directive Number 119-3, *Facility Use and Expenses at the National Emergency Training Center* dated May 21, 2018. The NETC provides training and educational programs in emergency response, preparedness, fire prevention and control, disaster response, and long-term disaster recovery. The principal purpose of FEMA Form FF-USFA-FY-21-107 (formerly 119-17-1), Request for Housing Accommodations, is to request housing at the NETC, and the principal purpose of FEMA Form FF-USFA-FY-21-108 (formerly 119-17-2), Request for Use of NETC Facilities, is to conduct official business at the NETC.

In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the removal of use of the FEMA Form FF-USFA-FY-21-108 (formerly 119-17-2), Request For Use of NETC Facilities, due to its antiquated information collection method and requirement. There is no longer a need to formally require the use of this form in order for a requestor to



receive support for special groups using the NETC.

This proposed information collection previously published in the **Federal Register** on November 25, 2022, at 87 FR 72497 with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

### Collection of Information

*Title:* Approval and Coordination of Requirements to Use the NETC Extracurricular for Training Activities.

*Type of Information Collection:* Extension, with change, of a currently approved collection.

*OMB Number:* 1660-0029.

*FEMA Forms:* FEMA Form FF-USFA-FY-21-107 (formerly 119-17-1), Request for Housing Accommodations.

*Abstract:* In accordance with FEMA Directive 119-3: *Facility Use and Expenses at the National Emergency Training Center* dated May 21, 2018, FEMA Form USFA-FY-21-107 (formerly 119-17-1), Request for Housing Accommodations, has been applied for functions at NETC.

*Affected Public:* Individuals or households, not-for-profit institutions, Federal Government.

*Estimated Number of Respondents:* 60.

*Estimated Number of Responses:* 60.

*Estimated Total Annual Burden*

*Hours:* 6.

*Estimated Total Annual Respondent Cost:* \$182.

*Estimated Respondents' Operation and Maintenance Costs:* \$0.

*Estimated Respondents' Capital and Start-Up Costs:* \$0.

*Estimated Total Annual Cost to the Federal Government:* \$877.

### Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Millicent Brown Wilson,**

*Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2023-03615 Filed 2-21-23; 8:45 am]

**BILLING CODE 9111-45-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID: FEMA-2022-0043; OMB No. 1660-0002]

### Agency Information Collection Activities: Submission for OMB Review, Comment Request; Disaster Assistance Registration

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** 30 Day notice of revision and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission seeks comments concerning changes to modernize and simplify the disaster assistance registration. The changes will reduce the burden on survivors by only requiring them to answer questions based on the type of assistance they need. This will also reduce the amount of time it takes for survivors to apply either online, or through a call center, therefore allowing call center agents to assist survivors more quickly. The notice also includes FEMA documenting all post-registration contacts, including callouts, casework, and auto-dialers performed for the purpose of determining whether disaster assistance applicants have unmet needs and may be eligible for additional assistance and/or share the results of those contacts directly with external stakeholders, such as state or local government partners, who can potentially assist those same applicants with assistance or services not provided by FEMA through specific programs directly targeted to disaster survivors.

**DATES:** Comments must be submitted on or before March 24, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

### FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address: [FEMA-Information-Collections-Management@fema.dhs.gov](mailto:FEMA-Information-Collections-Management@fema.dhs.gov) or Brian Thompson, Supervisory Program Specialist, FEMA, Recovery Directorate at 540-686-3602 or [Brian.Thompson6@fema.dhs.gov](mailto:Brian.Thompson6@fema.dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93-288, *as amended*) (the Stafford Act) is the legal basis for FEMA to provide financial assistance and services to individuals who apply for disaster assistance benefits in the event of a Presidentially-declared disaster. Regulations in title 44 CFR, subpart D, "Federal Assistance to Individuals and Households," implement the policy and procedures set forth in section 408 of the Stafford Act. Housing Assistance (HA) is a provision of the Individuals and Households Program (IHP), authorized by section 408(c) of the Stafford Act. There are two forms of assistance: financial and direct. Financial Housing Assistance refers to funds provided to eligible applicants for temporary lodging expenses, rental of temporary housing, or repair or replacement of a damaged primary residence. Direct Temporary Housing Assistance includes providing Temporary Housing Units (THU) through Multi-Family Lease or Repair (MLR) or Direct Lease, or placing transportable temporary housings (TTHU), such as manufactured housing units (MHU) and recreational vehicles or travel trailers, on private, commercial, or group sites. This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster, have necessary expenses and serious needs that are unable to be met through other means. Individuals and households may apply for assistance through the Registration Intake (RI) process under the IHP in person, via telephone, or the internet. FEMA provides financial assistance under



Other Needs Assistance to individuals or households affected by a major disaster to meet disaster-related medical, dental, funeral, childcare, personal property, transportation, moving and storage expenses, and other necessary expenses or serious needs resulting from a major disaster under section 408(e)(1) of the Stafford Act.

The changes to the following forms support Executive Order 14058, *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government*. The changes will rebuild trust in the Federal Government by promoting transparency of FEMA's Disaster Assistance application process. The major changes are:

- FEMA Forms FF-104-FY-21-123 (formerly 009-0-1T, English) and FF-104-FY-21-123-A (formerly 009-0-1T, Spanish), Tele-Registration Application for Disaster Assistance are being removed due to the addition of the ten Streamline Registration Intake flows. Those ten flows are:

- Home damage
- Personal property damage
- Vehicle damage
- Emergency needs
- Essential utilities outage
- Funeral expenses
- Childcare expenses
- Lodging expenses
- Medical or Dental expenses
- Expenses for miscellaneous items (e.g., chainsaws, generators, etc.)

- FEMA Form FF-104-FY-21-123-FA (English), Tele-Registration, is being removed and replaced with FEMA Form FF-104-FY-22-260, Streamline Registration Intake for Funeral Expenses, Disaster Assistance Registration.

- FEMA Forms FF-104-FY-21-123 (formerly 009-0-1T, English) and FF-104-FY-21-123-A (formerly 009-0-1T, Spanish), Tele-Registration Application for Disaster Assistance are being removed due to the addition of the Streamline RI flows and will be replaced by the following:

- FEMA Form FF-104-FY-22-255, Streamline Registration Intake for Home Damage, Disaster Assistance Registration
- FEMA Form FF-104-FY-22-256, Streamline Registration Intake for Personal Property Damage, Disaster Assistance Registration
- FEMA Form FF-104-FY-22-257, Streamline Registration Intake for Vehicle Property Damage, Disaster Assistance Registration
- FEMA Form FF-104-FY-22-258, Streamline Registration Intake for Emergency Needs, Disaster Assistance Registration

- FEMA Form FF-104-FY-22-259, Streamline Registration Intake for Essential Utilities Outage, Disaster Assistance Registration
- FEMA Form FF-104-FY-22-260, Streamline Registration Intake for Funeral Expenses, Disaster Assistance Registration
- FEMA Form FF-104-FY-22-261, Streamline Registration Intake for Childcare Expenses, Disaster Assistance Registration
- FEMA Form FF-104-FY-22-262, Streamline Registration Intake for Lodging Expenses, Disaster Assistance Registration
- FEMA Form FF-104-FY-22-263, Streamline Registration Intake for Medical or Dental Expenses, Disaster Assistance Registration
- FEMA Form FF-104-FY-22-264, Streamline Registration Intake for Expenses for Miscellaneous Items (e.g., chainsaws, generators, etc.), Disaster Assistance Registration

- COVID-19 Funeral Assistance being removed from FEMA Template FT-104-FY-22-101 Request for Information (RFI)—Funeral Assistance (English).

In documenting all post-registration callouts, auto-dialer contacts and subsequent collection of data, FEMA can determine whether applicants have unmet needs, can process the applicant for financial or direct assistance sharing the results of those contacts directly with external stakeholders. This data is specifically used for FEMA and its stakeholders to determine whether assistance is warranted.

This proposed information collection previously published in the **Federal Register** on November 28, 2022, at 87 FR 73018 with a 60-day public comment period. One public comment was received, but is considered not germane to this collection because it was incomplete. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

### Collection of Information

*Title:* Disaster Assistance Registration.

*Type of Information Collection:*

Extension, with change, of a currently approved information collection.

*OMB Number:* 1660-0002.

*FEMA Forms:* FEMA Form FF-104-FY-21-122 (formerly 009-0-1 (English)), Paper Application, Disaster Assistance Registration; FEMA Form FF-104-FY-21-122-A (formerly 009-0-2 (Spanish)), Solicitud en Papel, Registro Para Asistencia De Desastre; FEMA Form FF-104-FY-21-123 (formerly 009-0-1T (English)), Tele-

Registration, Disaster Assistance Registration; FEMA Form FF-104-FY-21-123-A (formerly 009-0-1T (Spanish)), Tele-Registration, Registro Para Asistencia De Desastre; FEMA Form FF-104-FY-21-125 (formerly 009-0-1Int (English)), internet, Disaster Assistance Registration; FEMA Form FF-104-FY-21-125-A (formerly 009-0-2Int (Spanish)), internet, Registro Para Asistencia De Desastre; FEMA Form FF-104-FY-21-127 (formerly 009-0-5 (English)), Manufactured Housing Unit Revocable License and Receipt for Government Property (Revocable License); FEMA Form FF-104-FY-21-127-A (formerly 009-0-6 (Spanish)), Licencia Revocable para la Unidad de Vivienda Temporal y Recibo para el uso de Propiedad del Gobierno (Licencia Revocable); FEMA Form FF-104-FY-21-128 (formerly 009-0-3 (English)), Declaration and Release; FEMA Form FF-104-FY-21-128-A (formerly 009-0-4 (Spanish)), Declaracion Y Autorizacion; FEMA Form FF-104-FY-22-255, Streamline Registration Intake for Home Damage, Disaster Assistance Registration; FEMA Form FF-104-FY-22-256, Streamline Registration Intake for Personal Property Damage, Disaster Assistance Registration; FEMA Form FF-104-FY-22-257, Streamline Registration Intake for Vehicle Property Damage, Disaster Assistance Registration; FEMA Form FF-104-FY-22-258, Streamline Registration Intake for Emergency Needs, Disaster Assistance Registration; FEMA Form FF-104-FY-22-259, Streamline Registration Intake for Essential Utilities Outage, Disaster Assistance Registration; FEMA Form FF-104-FY-22-260, Streamline Registration Intake for Funeral Expenses, Disaster Assistance Registration; FEMA Form FF-104-FY-22-261, Streamline Registration Intake for Childcare Expenses, Disaster Assistance Registration; FEMA Form FF-104-FY-22-262, Streamline Registration Intake for Lodging Expenses, Disaster Assistance Registration; FEMA Form FF-104-FY-22-263, Streamline Registration Intake for Medical or Dental Expenses, Disaster Assistance Registration; FEMA Form FF-104-FY-22-264, Streamline Registration Intake for Expenses for Miscellaneous Items (e.g., chainsaws, generators, etc.), Disaster Assistance Registration; FEMA Template FT-104-FY-22-101, Request for Information (RFI)—Funeral Verification; FEMA Template FT-104-FY-22-102, Request for Information (RFI)—Ownership Verification; FEMA Template FT-104-FY-22-103, Request for Information

(RFI)—Occupancy Verification; and FEMA Template FT-104-FY-22-104, Request for Information (RFI)—Medical, Dental, Disability-Accessibility-Related Items.

**Abstract:** The forms in this collection are used to obtain pertinent information to provide financial assistance, and if necessary, direct assistance to eligible individuals and households who, as a direct result of a disaster or emergency, have uninsured or under-insured, necessary or serious expenses they are unable to meet. This revision of a currently approved information collection will improve the applicant's experience with the disaster assistance registration process by providing a simpler, more intuitive interface and limiting required responses to those needed based on their needs. These changes will rebuild trust in the Federal Government by promoting transparency of FEMA's Disaster Assistance application process.

**Affected Public:** Individuals or households.

**Estimated Number of Respondents:** 1,684,234.

**Estimated Number of Responses:** 1,684,234.

**Estimated Total Annual Burden Hours:** 476,030.

**Estimated Total Annual Respondent Cost:** \$19,331,577.

**Estimated Respondents' Operation and Maintenance Costs:** \$0.

**Estimated Respondents' Capital and Start-Up Costs:** \$0.

**Estimated Total Annual Cost to the Federal Government:** 33,303,400.

## Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

**Millicent Brown Wilson,**

*Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2023-03611 Filed 2-21-23; 8:45 am]

**BILLING CODE 9111-24-P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA-2022-0050; OMB No. 1660-0005]**

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request; FEMA Inspection and Claims Forms

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** 30 Day notice of revision and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission seeks comments concerning the collection of information related to the flood insurance claims process and the housing inspection damage assessment process.

**DATES:** Comments must be submitted on or before March 24, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C St. SW, Washington, DC 20472, email address [FEMA-Information-Collections-Management@fema.dhs.gov](mailto:FEMA-Information-Collections-Management@fema.dhs.gov) or Daniel Claire, Insurance Examiner, FEMA Resilience (Pertaining to claims forms) at (202) 552-9891 or [Daniel.Claire@fema.dhs.gov](mailto:Daniel.Claire@fema.dhs.gov), contact: Todd Milliron, Supervisory Program Specialist, FEMA

Office of Response and Recovery (Pertaining to housing inspection instruments) at (540) 686-3844 or [Todd.Milliron@fema.dhs.gov](mailto:Todd.Milliron@fema.dhs.gov).

**SUPPLEMENTARY INFORMATION:** Pertaining to National Flood Insurance Program (NFIP) Direct claim forms, Congress created the NFIP through the National Flood Insurance Act of 1968 (NFIA) (Title XIII of Pub. L. 90-448, 82 Stat. 476), codified at 42 U.S.C. 4001 *et seq.* The NFIP enables property owners in participating communities to purchase flood insurance. Communities participate in the NFIP based on an agreement between the community and Federal Emergency Management Agency (FEMA). If a community adopts and enforces a floodplain management ordinance to reduce future flood risk to new construction in floodplains, FEMA makes flood insurance available within the community as a financial protection against flood losses. Accordingly, the NFIP is comprised of three key activities: flood insurance, floodplain management, and flood hazard mapping.

A prospective policyholder may purchase an NFIP flood insurance policy, known as a Standard Flood Insurance Policy (SFIP), either: (1) directly from the Federal Government through a direct servicing agent (referred to as "NFIP Direct"), or (2) from a participating private insurance company through the Write Your Own (WYO) Program. *See* 44 CFR 62.23-24. The SFIP is a single-peril (flood) policy that pays for direct physical damage to insured property. There are three SFIP policy forms (*i.e.*, insurance contracts): (1) Dwelling Form, (2) General Property Form, and (3) Residential Condominium Building Association Policy (RCBAP) Form, which are published in FEMA's regulations. *See* 44 CFR 61.13; *see also* 44 CFR part 61, Appendices A(1), A(2), and A(3). The SFIP sets out the terms and conditions of insurance. FEMA establishes terms, rate structures, and premium costs of the SFIP. The terms, coverage limits, and flood insurance premiums are the same whether purchased from the NFIP Direct or the WYO Program. *See* 44 CFR 62.23(c), (h).

All flood loss claims presented under the NFIP are paid directly with U.S. Treasury funds, regardless of whether the policy is issued by the NFIP Direct or by a WYO company. The information in the NFIP Direct collection includes all the data necessary to adjudicate claims for damages and provide SFIP benefits resulting from flood losses.

In addition to the requirements of the NFIA, section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance

Reform Act of 2004 (42 U.S.C. 4011) required FEMA to establish a claims appeals process. See 44 CFR 62.20.

Pertaining to housing inspections, also part of this collection, the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Public Law 93–288, as amended, is the legal basis for FEMA to provide financial assistance and services to individuals applying for disaster assistance benefits in the event of a Federally declared disaster. Regulations in 44 CFR 206.110—Federal Assistance to Individuals and Households implement the policy and procedures set forth in section 408 of the Stafford Act, 42 U.S.C. 5174, as amended.

This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster or emergency, have uninsured or under-insured expenses, and serious needs, and are unable to meet such expenses or needs through other means.

Individuals and households applying for assistance must provide information detailing their losses and needs through the disaster assistance registration process covered under collection 1660–0002, Disaster Assistance Registration. If FEMA determines the applicant had home or personal property damage, has no insurance, or that the applicant's insurance coverage may not meet their needs, an inspection is needed to verify disaster caused damage.

All pertinent information for a specific applicant is stored under a unique registration identification (ID) within the National Emergency Management Information System (NEMIS). An inspection request occurs due to NEMIS-driven business rules (automatically), applicant request, or a FEMA caseworker request. The scope of an inspection for owners includes noting real and personal property (furnishing and appliances) damages to the interior and exterior of the dwelling, addressing special needs, transportation, unmet needs, and miscellaneous purchases. Inspectors do not note real property specifications for renters.

Once the inspector validates the information provided by the applicant during registration intake, the inspector begins an assessment of real and/or personal property damages utilizing Automated Construction Estimator (ACE) software. The same ACE software screens are used regardless of how the inspection occurs (*i.e.*, via onsite, via voice over the phone, or via video). The inspector then uploads this information back to FEMA via the NEMIS through

use of a secure connection. The inspector only records observed disaster caused damages and does not determine eligibility or damage award levels. FEMA's policies and business rules determine eligibility and award levels based upon the damage assessment, and other available information.

For this submission, FEMA identified two NFIP Direct claim forms in which necessary data could be combined or collected in other forms or systems, thereby eliminating the need for those forms, and reducing duplicative information collection. Accordingly, FEMA proposes to remove the following two forms from this collection: (1) FEMA Form FF–206–FY–21–113, Advance Payment Request—Building & Contents, and (2) FEMA Form FF–206–FY–21–114, Advance Payment Request—Increased Cost of Compliance (ICC).

This proposed information collection previously published in the **Federal Register** on December 8, 2022, at 87 FR 75281 with a 60 day public comment period. FEMA received one public comment. The public comment is not germane to this collection.

The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

#### Collection of Information

*Title:* FEMA Inspection and NFIP Direct Claims Forms.

*Type of Information Collection:* Extension, with change, of a currently approved information collection.

*OMB Number:* 1660–0005.

*FEMA Forms:* FEMA Form FF–206–FY–21–106 (formerly 086–0–06) Personal Property (Contents) Worksheet; FEMA Form FF–206–FY–21–107 (formerly 086–0–07), Building Property Worksheet; FEMA Form FF–206–FY–21–108 (formerly 086–0–09), Proof of Loss—Building & Contents (Policyholder-Prepared); FEMA Form FF–206–FY–21–109 (formerly 086–0–10), Proof of Loss—Increased Cost of Compliance (ICC); FEMA Form FF–206–FY–21–110 (formerly 086–0–11), First Notice of Loss; FEMA Form FF–206–FY–21–111 (formerly 086–0–17), Manufactured (Mobile) Home/Travel Trailer Worksheet; FEMA Form FF–206–FY–21–112 (formerly 086–0–22), Proof of Loss—Building & Contents (Adjuster-Prepared); FEMA Form FF–206–FY–21–115 (formerly 086–0–25), Claim Appeal; FEMA Form FF–104–FY–22–220 (formerly 009–0–143), Onsite Housing Inspections; FEMA Form FF–104–FY–22–221 (formerly 009–0–144), Remote Voice Telephony

Housing Inspections; and FEMA Form FF–104–FY–22–222 (formerly 009–0–145), Remote Video Telephony Housing Inspections.

*Abstract:* After a flood loss, claims forms are used by NFIP Direct policyholders to provide information needed to investigate, document, evaluate, and adjudicate claims against FEMA policies for flood damage to insured property or determine eligibility and settlement for benefits under Coverage D, Increased Cost of Compliance coverage. After a federally-declared disaster, FEMA inspectors use household inspection instruments to verify applicant information and document damage to determine award eligibility.

*Affected Public:* Individuals or households, businesses or other for-profit, not-for-profit institutions, and State, local or Tribal governments.

*Estimated Number of Respondents:* 302,360.

*Estimated Number of Responses:* 302,360.

*Estimated Total Annual Burden Hours:* 309,621.

*Estimated Total Annual Respondent Cost:* \$12,573,707.

*Estimated Respondents' Operation and Maintenance Costs:* \$0.00.

*Estimated Respondents' Capital and Start-Up Costs:* \$0.00.

*Estimated Total Annual Cost to the Federal Government:* \$103,163,066.

#### Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Millicent Brown Wilson,**

*Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2023–03613 Filed 2–21–23; 8:45 am]

**BILLING CODE 9111–52–P**

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency**

[Docket ID: FEMA–2022–0039; OMB No. 1660–0072]

**Agency Information Collection****Activities: Submission for OMB Review, Comment Request; FEMA Mitigation Grant Programs**

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** 30 Day notice of revision and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission seeks comments concerning FEMA's Hazard Mitigation Assistance (HMA) financial and technical assistance programs; specifically, the Pre-Disaster Mitigation Program (PDM), the Building Resilient Infrastructure and Communities (BRIC) program, BRIC Direct Technical Assistance (DTA), and the Flood Mitigation Assistance (FMA) program.

**DATES:** Comments must be submitted on or before March 24, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472, email address: [FEMA-Information-Collections-Management@fema.dhs.gov](mailto:FEMA-Information-Collections-Management@fema.dhs.gov) or Jennie Orenstein, Branch Chief, Policy, Tools and Training Branch, Federal Insurance and Mitigation Administration, FEMA, at [jennie.gallardy@fema.dhs.gov](mailto:jennie.gallardy@fema.dhs.gov) and 202–212–4071.

**SUPPLEMENTARY INFORMATION:** This collection of information is necessary to implement grants for the FMA, PDM, and BRIC programs.

The FMA program is authorized pursuant to the National Flood

Insurance Act of 1968, as amended (Pub. L. 90–448, 42 U.S.C. 4104c). FMA was created as part of the National Flood Insurance Reform Act (NFIRA) of 1994 (Pub. L. 103–325, 42 U.S.C. 4001). The Biggert-Waters Flood Insurance Reform Act of 2012 (BW–12), (Pub. L. 112–141, 42 U.S.C. 4001) consolidated the Repetitive Flood Claims (RFC) and Severe Repetitive Loss grant (SRL) programs into FMA. Under FMA, cost-share requirements were changed to allow more Federal funds for properties with repetitive flood claims. The FMA program, under 44 CFR part 77 (October 1, 2021; previously under 44 CFR part 79), provides funding for measures taken to reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other structures insured under the National Flood Insurance Program (NFIP). PDM is authorized under section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), (Pub. L. 93–288, 42 U.S.C. 5133).

On August 4, 2020, FEMA established the BRIC program, implementing Section 1234 of Disaster Recovery Reform Act (DRRA) (Pub. L. 93–288, 42 U.S.C. 5121 *et seq.*), which amended section 203 of the Stafford Act (Pub. L. 93–288, 42 U.S.C. 5133). The BRIC program is designed to promote a national culture of preparedness and public safety through encouraging investments to protect our communities and infrastructure and through strengthening national mitigation capabilities to foster resilience. The BRIC program seeks to fund effective and innovative projects that will reduce risk, increase resilience, and serve as a catalyst to encourage the whole community to invest in and adopt policies related to mitigation.

The guiding principles of the BRIC program include (1) support state and local governments, tribes, and territories through capability- and capacity-building to enable them to identify mitigation actions and implement projects that reduce risks posed by natural hazards; (2) encourage and enable innovation while allowing flexibility, consistency, and effectiveness; (3) promote partnerships and enable high-impact investments to reduce risk from natural hazards with a focus on critical services and facilities, public infrastructure, public safety, public health, and communities; (4) provide a significant opportunity to reduce future losses and minimize impacts on the Disaster Relief Fund; (5) promote equity, including by helping members of disadvantaged groups and prioritizing 40 percent of the benefits to disadvantaged communities as

referenced in Executive Order (E.O.) 14008, *Tackling the Climate Crisis At Home and Abroad*, (86 FR 7619, Feb. 1, 2021) which describes the Administration's Justice40 Initiative; and (6) support the adoption and enforcement of building codes, standards, and policies that will protect the health, safety, and general welfare of the public, taking into account future conditions, prominently including the effects of climate change, and have long-lasting impacts on community risk reduction, including for critical services and facilities and for future disaster costs. The BRIC program distributes funds annually and applies a Federal/Non-Federal cost share. To increase transparency in decision-making while building capability and partnerships, FEMA convenes a National Review Panel to score subapplications based on qualitative evaluation criteria.

The BRIC program is authorized under section 203 of the Stafford Act to provide technical assistance for implementing predisaster hazard mitigation measures. BRIC implements this authority by providing non-financial DTA to eligible communities. The DTA initiative is specifically designed to assist economically disadvantaged rural communities, tribal entities, and Justice40 underserved communities. The Justice40 Initiative provides guidance on implementing environmental justice and equitable implementation of program resources. DTA delivers hazard mitigation assistance to communities who face resource barriers that prevent access to Hazard Mitigation grants and other Federal assistance grants.

In accordance with 2 CFR 200.203, FEMA requires all parties interested in receiving FEMA mitigation grants to submit an application package for grant assistance. Applications and subapplications for BRIC and FMA are submitted via FEMA GO. FEMA GO is the new system of record for grants for new grant applications beginning in Fiscal Year (FY) 2020.

The Mitigation (MT) eGrants system is used to manage FY 2022 FMA Swift Current grants, FMA annual grants awarded prior FY 2019 and Pre-Disaster Mitigation grant program offerings. The MT eGrants system is an intuitive, user-friendly, web-based application owned and operated by FIMA that allows eligible applicants and subapplicants to apply for grants and subgrants through the internet. MT eGrants is both an internal (FEMA-facing) system and an external facing system. The FEMA GO and MT eGrants systems were developed to meet the intent of the e-Government initiative, authorized by

Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107, 31 U.S.C. 6101). This initiative requires that all Government agencies both streamline grant application processes and provide for the means to electronically create, review, and submit a grant application via the internet.

Under 2 CFR part 200 (for BRIC and PDM) and 44 CFR 77.3 (FMA), Recipients must complete and submit progress report(s) to the FEMA Regional Administrator on a quarterly basis, certifying how the funds are being used and reporting on the progress of activities funded under the subrecipient awards made to the Recipient by FEMA. The Regional Administrator and Recipient negotiate the date for submission of the first report.

The Benefit Cost Determination is used to collect data to evaluate the proposed project's cost effectiveness. Mitigation projects must be cost effective to be eligible for Hazard Mitigation Assistance funding. Cost effectiveness is demonstrated through a FEMA-validated benefit cost analysis. The Environmental and Historic Preservation Review is used to collect information that is needed to ensure that a proposed project complies with applicable environmental and historic preservation regulations and laws. This information is collected to assure that adverse project impact is minimized according to the National Environmental Policy Act of 1969 (NEPA), as amended (Pub. L. 91–190, 42 U.S.C. 4321–4347); The Endangered Species Act of 1973 (ESA) (Pub. L. 93–205, 16 U.S.C. 1531); The National Historic Preservation Act of 1966 (Pub. L. 89–665, U.S.C. 16 U.S.C. 470); Executive Order (E.O.) 11988, *Floodplain Management*, (80 FR 6530, Feb. 5, 2015) regarding floodplains; and E.O. 11990 *Protection of Wetlands* (42 FR 26961, May 24, 1977) other applicable laws and executive orders. The Project Narrative—Subgrant Application process is used to collect the information necessary for FEMA to assess the financial needs of the applicants, as well as the projected benefits to be obtained from the use of grant funds for each of its mitigation grant programs. Quarterly Progress Reports describe the status of those projects on which a final payment of the Federal share has not been made to the Recipient and identify problems or circumstances expected to result in noncompliance with the approved award conditions.

This proposed information collection previously published in the **Federal Register** on November 23, 2022, at 87

FR 71657 with a 60 day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

#### Collection of Information

*Title:* FEMA Mitigation Grant Programs.

*Type of Information Collection:* Extension, with change, of a currently approved collection.

*OMB Number:* 1660–0072.

*FEMA Forms:* FEMA Form FF–206–FY–22–151, Quarterly Progress Report; FEMA Instruction FI–206–FY–22–102, Instructions to Recipients for Quarterly Progress Reports for FEMA's Building Resilient Infrastructure and Communities (BRIC), the Pre-Mitigation Disaster (PDM), and Flood Mitigation Assistance (FMA); FEMA Form FF–206–FY–22–155, BRIC DTA Request; FEMA Form FF–206–FY–22–158; Acknowledgement of Conditions For Properties Using FEMA Hazard Mitigation Assistance Grant Funds; FEMA Form FF–206–FY–22–157, Model Deed Restriction; and FEMA Form FF–206–FY–22–156, Model Statement of Assurances for Property Acquisition Projects.

*Abstract:* The Federal Emergency Management Agency's (FEMA's) Flood Mitigation Assistance (FMA) and Building Resilient Infrastructure and Communities (BRIC) programs use an automated grant application and management system called FEMA GO. The Pre-Disaster Mitigation (PDM) program and the FMA program also uses an automated grant application and management system called Mitigation (MT) eGrants. The FEMA GO and MT eGrants systems include application information needed to apply for funding under these grant programs. FEMA uses the BRIC Panel Review Form to solicit volunteers from state, local, tribal governments and Other Federal Agencies (OFA), to review applications that are routed to the qualitative panel reviews. The volunteers will review, and score applications based on a pre-determined scoring criteria. The PDM, FMA, and BRIC programs will use the same FEMA Form FF–206–FY–22–151 Quarterly Progress Report (QPR) Form.

*Affected Public:* State, local or Tribal governments.

*Estimated Number of Respondents:* 617.

*Estimated Number of Responses:* 17,249.

*Estimated Total Annual Burden Hours:* 97,858.

*Estimated Total Annual Respondent Cost:* \$5,914,144.

*Estimated Respondents' Operation and Maintenance Costs:* \$0.

*Estimated Respondents' Capital and Start-Up Costs:* \$0.

*Estimated Total Annual Cost to the Federal Government:* \$7,970,053.

#### Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Millicent Brown Wilson,**

*Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2023–03609 Filed 2–21–23; 8:45 am]

**BILLING CODE 9111–BW–P**

#### DEPARTMENT OF HOMELAND SECURITY

##### Federal Emergency Management Agency

[Docket ID FEMA–2022–0046; OMB No. 1660–0143]

##### Agency Information Collection Activities: Submission for OMB Review, Comment Request; Federal Emergency Management Agency Individual Assistance Customer Satisfaction Surveys

**AGENCY:** Federal Emergency Management Agency, Department of Homeland Security.

**ACTION:** 30-Day notice of revision and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the

requirements of the Paperwork Reduction Act of 1995. The submission seeks comments concerning the collection of Individual Assistance customer satisfaction survey responses and information for assessment and improvement of the delivery of disaster assistance to individuals and households.

**DATES:** Comments must be submitted on or before March 24, 2023.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Director, Information Management Division, 500 C Street SW, Washington, DC 20472; email address: [FEMA-Information-Collections-Management@fema.dhs.gov](mailto:FEMA-Information-Collections-Management@fema.dhs.gov); or Jason Salazar, Program Analyst, Recovery Directorate, FEMA at [Jason.Salazar@FEMA.dhs.gov](mailto:Jason.Salazar@FEMA.dhs.gov) or (940) 268-9245.

**SUPPLEMENTARY INFORMATION:** This collection is in accordance with E.O. 12862, *Setting Customer Service Standards* (58 FR 48257, Sept. 11, 1993) and E.O. 13571, *Streamlining Service Delivery and Improving Customer Service* (76 FR 24339, May 2, 2011) requiring all Federal Agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The Government Performance and Results Act (GPRA) of 1993 (Pub. L. 103-62, 107 Stat. 285) requires agencies to set missions and goals and measure performance against them and the GPRA Modernization Act of 2010 (Pub. L. 111-352, 31 U.S.C § 1116) requires quarterly performance assessments of government programs for the purposes of assessing agency performance and improvement. FEMA will fulfill these requirements by collecting customer satisfaction program information through surveys of the Recovery Directorate's external customers.

This is a request to reduce burden hours in order to comply with the Department of Homeland Security's Paperwork Reduction Act Burden Reduction Initiative. Burden has been reduced in the following ways:

1. Corrected inaccurate burden per response for electronic survey forms. Original estimates were prior to implementation of electronic surveys.

Completion times are faster than original estimates.

2. A higher percentage of respondents prefer email surveys in recent years, which are faster to complete than phone surveys.

3. The burden hours allocated to qualitative research have been reduced based on recent utilization.

No changes have been made to the currently approved survey forms. This collection was previously approved in July 2021.

This proposed information collection previously published in the **Federal Register** on December 2, 2022, at 87 FR 74161 with a 60-day public comment period. No comments were received. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

#### Collection of Information

**Title:** Federal Emergency Management Agency Individual Assistance Customer Satisfaction.

**Type of Information Collection:** Extension, with change, of a currently approved information collection.

**OMB Number:** 1660-0143.

**FEMA Forms:** FEMA Form FF-104-FY-21-159 (formerly 519-0-36), Initial Survey—Phone; FEMA Form FF-104-FY-21-160 (formerly 519-0-37), Initial Survey—Electronic; FEMA Form FF-104-FY-21-161 (formerly 519-0-38), Contact Survey—Phone; FEMA Form FF-104-FY-21-162 (formerly 519-0-39), Contact Survey—Electronic; FEMA Form FF-104-FY-21-163 (formerly 519-0-40), Assessment Survey—Phone; FEMA Form FF-104-FY-21-164 (formerly 519-0-41), Assessment Survey—Electronic; Focus Groups; One-on-One Interviews.

**Abstract:** Federal Agencies are required to survey their customers to determine the kind and quality of services customers want and their level of satisfaction with those services. Analysis from the survey is used to measure whether FEMA is meeting its mission of being accessible, timely, and effective when it comes to meeting the needs of disaster survivors.

**Affected Public:** Individuals or households.

**Estimated Number of Respondents:** 38,200.

**Estimated Number of Responses:** 38,200.

**Estimated Total Annual Burden Hours:** 5,893.

**Estimated Total Annual Respondent Cost:** \$239,314.

**Estimated Respondents' Operation and Maintenance Costs:** \$0.

**Estimated Respondents' Capital and Start-Up Costs:** \$18,750.

**Estimated Total Annual Cost to the Federal Government:** \$2,091,623.

#### Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Millicent Brown Wilson,**

*Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2023-03618 Filed 2-21-23; 8:45 am]

**BILLING CODE 9111-24-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R3-ES-2023-N007;  
FXES11130300000-234-FF03E00000]

#### Endangered and Threatened Species; Receipt of Recovery Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

**DATES:** We must receive your written comments on or before March 24, 2023.

**ADDRESSES:** *Document availability and comment submission:* Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (e.g., ESXXXXXX; see table in

**SUPPLEMENTARY INFORMATION):**

- *Email (preferred method):* [permitsR3ES@fws.gov](mailto:permitsR3ES@fws.gov). Please refer to the respective application number (e.g., Application No. ESXXXXXX) in the subject line of your email message.

- *U.S. Mail:* Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

**FOR FURTHER INFORMATION CONTACT:**

Nathan Rathbun, 612–713–5343 (phone); [permitsR3ES@fws.gov](mailto:permitsR3ES@fws.gov) (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered

within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act.

**Background**

The ESA prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the CFR provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

**Permit Applications Available for Review and Comment**

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE38085B .....	Mountain State Biosurveys, LLC, Glenwood, WV.	Indiana bat ( <i>Myotis sodalis</i> ), gray bat ( <i>M. grisescens</i> ), northern long-eared bat ( <i>M. septentrionalis</i> ).	AL, AR, FL, GA, IA, IL, IN, KY, LA, MI, MN, MO, MS, NC, OH, SC, TN, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist nets or harp traps, handle, identify, radio tag, band, collect noninvasive measurements, and release.	Renew.
PER0036813 .....	Adam Benshoff, Kent, OH.	Roanoke logperch ( <i>Percina rex</i> ); 32 freshwater mussel species.	AL, AR, CT, DC, GA, IA, KS, KY, IL, IN, LA, MA, MD, MI, MN, MO, MS, NC, NE, NH, NJ, NY, OH, OK, PA, SC, SD, TN, VA, VT, WI, WV.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, release, and relocate due to stranding.	New.
TE11170C .....	Ashleigh Cable, Richmond, KY.	Indiana bat ( <i>Myotis sodalis</i> ), gray bat ( <i>M. grisescens</i> ), and northern long-eared bat ( <i>M. septentrionalis</i> ).	AL, AR, CT, DE, FL, GA, IA, IL, IN, KS, LA, MA, MD, ME, MI, MN, MO, MS, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, VI, VT, WI, WV.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist nets or harp traps, handle, identify, radio tag, band, collect noninvasive measurements, collect hair, guano, fungal lift tape, swab and wing biopsy sample, collect skin scrape samples, conduct hibernacula surveys, salvage dead bats, and release.	Renew and amend.



Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE64986C .....	Jeffrey, Gordon, Columbus, OH.	Clubshell ( <i>Pleurobema clava</i> ), Fanshell ( <i>Cyprogenia stegaria</i> ), Northern riffleshell ( <i>Epioblasma torulosa rangiana</i> ), Purple cat's paw pearlymussel ( <i>E. obliquata obliquata</i> ), Snuffbox mussel ( <i>E. triquetra</i> ), White catspaw (pearlymussel) ( <i>E. obliquata perobliquata</i> ), Pink mucket (pearlymussel) ( <i>Lampsilis abrupta</i> ), Rabbitsfoot ( <i>Quadrula cylindrica cylindrica</i> ), Rayed bean ( <i>Villosa fabalis</i> ), Sheepnose mussel ( <i>Plethobasus cyphus</i> ).	OH .....	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, release, and relocate due to stranding.	Renew.
ES38856A .....	Skelly and Loy, Inc., Harrisburg, PA.	Indiana bat ( <i>Myotis sodalis</i> ), northern long-eared bat ( <i>M. septentrionalis</i> ).	IA, MI, CT, MD, NJ, NY, PA, VT.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist nets or harp traps, handle, identify, radio tag, band, collect noninvasive measurements, and release.	Renew.

### Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

### Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

### Authority

We publish this notice under section 10(c) of the Endangered Species Act of

1973, as amended (16 U.S.C. 1531 *et seq.*).

**Lori Nordstrom,**

*Assistant Regional Director, Ecological Services, USFWS Region 3.*

[FR Doc. 2023-03637 Filed 2-21-23; 8:45 am]

**BILLING CODE 4333-15-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R8-ES-2022-0170;  
FXES11140800000-234-FF08ECAR00]

### Endangered and Threatened Wildlife and Plants; Wind Energy Condor Action Team Projects, Kern County, CA; Incidental Take Permit Application and Draft Conservation Plan; Draft Environmental Assessment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received an application from the Wind Energy Condor Action Team (WECAT) for an incidental take permit under the Endangered Species Act. The permit, if granted, would authorize take of the federally endangered California condor (*Gymnogyps californianus*), incidental to otherwise lawful activities associated with the operation of WECAT members' separate wind energy projects. Available for comment are the draft conservation

plan that WECAT prepared in support of their application, and a draft environmental assessment, which we have prepared pursuant to the National Environmental Policy Act. We invite comments from the public and Federal, Tribal, State, and local governments. We will take comments into consideration before deciding whether to issue an incidental take permit.

**DATES:** Written comments should be received on or before March 24, 2023.

### ADDRESSES:

**Obtaining Documents:** You may obtain copies of the documents online in Docket No. FWS-R8-ES-2022-0170 at <https://www.regulations.gov>, or you may request copies of the documents by phone or email (see **FOR FURTHER INFORMATION CONTACT**).

**Submitting Written Comments:** Please submit your written comments using one of the following methods:

- **Online:** <https://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R8-ES-2022-0170.

- **U.S. mail:** Public Comments Processing, Attn: Docket No. FWS-R8-ES-2022-0170; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

For more information, see Public Availability of Comments under **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:** Peter Sanzenbacher, Fish and Wildlife Biologist, by email at [peter\\_sanzenbacher@fws.gov](mailto:peter_sanzenbacher@fws.gov) or via phone at (442) 222-0165. Individuals in the



United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service (Service), have received an application from the Wind Energy Condor Action Team (WECAT) for an incidental take permit under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The application addresses the potential take of the federally endangered California condor (condor; *Gymnogyps californianus*), incidental to the otherwise lawful operation of wind energy projects owned by WECAT members, as described in the WECAT conservation plan.

### Background

The Service listed the California condor as endangered on February 24, 1967 (67 FR 2758). Section 9 of the ESA (16 U.S.C. 1538) and Federal regulations prohibit the “take” of animal species listed as endangered or threatened without special exemption. Under the ESA, “take” is defined to include the following activities: “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct” (16 U.S.C. 1532). Under section 10(a)(1)(B) of the ESA (16 U.S.C. 1539(a)(1)(B)), we may issue permits to authorize take of listed fish and wildlife species that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered species are set forth in the Code of Federal Regulations (CFR) at 50 CFR 17.22. Issuance of an incidental take permit also must not jeopardize the existence of federally listed fish, wildlife, or plant species, pursuant to section 7 of the ESA and 50 CFR 402.02. The permittee would receive assurances under our “No Surprises” regulations (50 CFR 17.22(b)(5)).

### Permit Application and Associated Documents

WECAT has submitted a draft conservation plan that describes the activities that would be covered by the incidental take permit, which include the operation of wind turbines and other wind energy facility infrastructure (*i.e.*, above-ground power lines and poles, meteorological towers, and substations and switchyards) at WECAT member

projects. To minimize the risk of incidental take of California condors, the WECAT members will maintain programs to detect condors approaching covered projects, and temporarily curtail operation of wind turbines when appropriate. The conservation plan also includes use of adaptive management to allow for maintaining the protection of condors as technologies, condor behavior, and other factors change over time. To mitigate the impact of incidental take, the applicants propose to work with an existing captive breeding facility to fund the production of additional condors for release into the wild. The Service and applicants used the results of population modeling and a population viability analysis conducted by a team of independent researchers to inform the mitigation strategy and ensure that the level of potential injury and mortality of condors permitted at covered projects would not impede the recovery of the species. A report documenting the methods and results of these analyses is appended to the draft conservation plan. A “Frequently Asked Questions” document for the analyses described above is attached to the draft environmental assessment (EA). The draft conservation plan and the draft EA also consider alternatives to the proposed action, including a no action alternative.

### National Environmental Policy Act Compliance

The National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) requires Federal agencies to analyze their proposed actions to determine whether the actions may significantly affect the human environment. In the NEPA analysis, the Federal agency will identify the effects, as well as possible mitigation for effects on environmental resources, that could occur with the implementation of the proposed action and alternatives. The Federal action in this case is the Service’s proposed issuance of an incidental take permit for the federally endangered California condor. The Service prepared a draft EA to analyze the impacts of issuing the incidental take permit as described in the conservation plan, and to inform the public of the proposed action, alternatives, and associated impacts.

### Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time.

While you can ask us in your comment to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

### Authority

We provide this notice under section 10(c) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

### Scott Sobiech,

Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2023-03646 Filed 2-21-23; 8:45 am]

BILLING CODE 4333-15-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R3-ES-2022-N075;  
FXES11130300000-223-FF03E00000]

### Endangered and Threatened Species; Receipt of Recovery Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act of 1973. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

**DATES:** We must receive your written comments on or before March 24, 2023.

**ADDRESSES:** *Document availability and comment submission:* Submit requests for copies of the applications and related documents, as well as any comments, by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.*, ESXXXXXX; see table in **SUPPLEMENTARY INFORMATION**):

- *Email (preferred method):* [permitsR3ES@fws.gov](mailto:permitsR3ES@fws.gov). Please refer to the respective application number (*e.g.*, Application No. ESXXXXXX) in the subject line of your email message.

• *U.S. Mail*: Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

**FOR FURTHER INFORMATION CONTACT:**

Nathan Rathbun, 612–713–5343 (phone); [permitsR3ES@fws.gov](mailto:permitsR3ES@fws.gov) (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** We, the U.S. Fish and Wildlife Service, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section

10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act.

**Background**

The ESA prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote

recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

**Permit Applications Available for Review and Comment**

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE 19208C .....	Ashley Reed, Bloomington, IN.	Indiana bat ( <i>Myotis sodalis</i> ), gray bat ( <i>M. grisescens</i> ), and Northern long-eared bat ( <i>M. septentrionalis</i> ).	AL, AR, CT, GA, IL, IN, IA, KS, KY, MA, MD, ME, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, VA, VT, WI, and WV.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist-nets and harp traps, handle, identify, radio-tag, band, collect noninvasive measurements, and release.	Renew.
TE 207526 .....	U.S. Geological Survey, Columbia, MO.	Pallid sturgeon ( <i>Scaphirhynchus albus</i> ).	IA, IL, KS, MO, NE, and SD.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, hold, transport, tag, sample, culture, collect non-invasive measurements, and release.	Renew and amend.
TE 151109 .....	Ohio Department of Natural Resources, Columbus, OH.	American burying beetle ( <i>Nicrophorus americanus</i> ).	OH and NE .....	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with pitfall traps, handle, collect noninvasive measurements, transport, hold, salvage, captive propagate, augment wild populations, and release.	Renew and amend.
TE37601C .....	University of Minnesota, St. Paul, MN.	Rusty patched bumble bee ( <i>Bombus affinis</i> ).	MN .....	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, hold, collect noninvasive measurements, and release.	Amend.
TE 212440 .....	Bat Conservation and Management, Inc., Carlisle, PA.	Indiana bat ( <i>Myotis sodalis</i> ), gray bat ( <i>M. grisescens</i> ), and Northern long-eared bat ( <i>M. septentrionalis</i> ).	AL, AR, CT, FL, GA, IL, IN, IA, KY, MA, MD, ME, MI, MO, MS, NC, NH, NJ, NY, OH, OK, PA, RI, SC, TN, VA, VT, WI, and WV.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist-nets, handle, identify, radio-tag, band, collect non-invasive measurements, and release.	Renew and amend.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE 11135C .....	Herpetological Resource and Management, LLC, Grass Lake, MI.	Animals: Eastern massasauga rattle-snake ( <i>Sistrurus catenatus</i> ) and Copperbelly water snake ( <i>Nerodia erythrogaster neglecta</i> ) Plants: Pitcher's thistle ( <i>Cirsium pitcheri</i> ), Dwarf lake iris ( <i>Iris lacustris</i> ), eastern prairie fringed orchid ( <i>Platanthera leucophaea</i> ).	IL, IN, MI, OH, and WI ..	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, hold, mark, collect noninvasive measurements, and release.	Renew and amend.
ES69825D .....	Michigan State University, Hickory Corners, MI.	Add new species—Mitchell's satyr butterfly ( <i>Neonympha mitchellii mitchellii</i> )—to existing authorized species: Poweshiek skipperling ( <i>Oarisma poweshiek</i> ).	MI .....	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, collect eggs, headstart, hold, release.	Amend.
ES21829B .....	Laura Bishop-Boros, Williamsburg, VA.	Add new species—Mexican long-nosed bat ( <i>Leptonycteris nivalis</i> ) and Hawaiian hoary bat ( <i>Lasiurus cinereus semotus</i> )—to existing authorized species: Indiana bat ( <i>Myotis sodalis</i> ), gray bat ( <i>M. grisescens</i> ), and Northern long-eared bat ( <i>M. septentrionalis</i> ).	Add new locations—HI, LA, IL, NM, MT, TX—to existing authorized States: AL, AR, CT, DE, DC, FL, GA, IN, IA, KS, KY, MA, MD, ME, MI, MO, MS, NE, NC, ND, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, VA, VT, WI, WV, and WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist-nets, handle, identify, radiotag, band, collect noninvasive measurements, collect bio-samples, enter hibernacula, and release.	Renew and amend.
ES90090B .....	Power Engineers Inc., Richmond, VA.	Northern long-eared bat ( <i>Myotis septentrionalis</i> ).	DE, KS, ME, MA, MN, MT, NE, NH, ND, SD, RI, OK, WI, and WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist-nets, handle, identify, collect noninvasive measurements, and release.	Renew.
ESPER0107276	Sarah Stankavich, Columbus, OH.	Indiana bat ( <i>Myotis sodalis</i> ), gray bat ( <i>M. grisescens</i> ) and Northern long-eared bat ( <i>M. septentrionalis</i> ).	AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, MA, ME, MD, MI, MO, MS, MT, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, VT, VA, WI, WV, and WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist-nets, handle, identify, radiotag, band, collect noninvasive measurements, collect bio-samples, enter hibernacula, and release.	New.

### Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

### Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

### Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

**Lori Nordstrom,**

*Assistant Regional Director, Ecological Services, Midwest Region.*

[FR Doc. 2023–03644 Filed 2–21–23; 8:45 am]

**BILLING CODE 4333–15–P**

### DEPARTMENT OF THE INTERIOR

#### Fish and Wildlife Service

[Docket No. FWS–R4–ES–2023–0019; FXES11130400000–234–FF04EF4000]

#### Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Eastern Indigo Snake; Decatur County, GA; Categorical Exclusion

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce receipt of an application from Tri-State Solar Project, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally

listed threatened eastern indigo snake (*Drymarchon couperi*) incidental to the construction and operation of a solar facility in Decatur County, Georgia. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

**DATES:** We must receive your written comments on or before March 24, 2023.

**ADDRESSES:**

*Obtaining Documents:* You may obtain copies of the documents online in Docket No. FWS-R4-ES-2023-0019 at <https://www.regulations.gov>.

*Submitting Comments:* If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online:* <https://www.regulations.gov>.

Follow the instructions for submitting comments on Docket No. FWS-R4-ES-2023-0019.

- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS-R4-ES-2023-0019; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

**FOR FURTHER INFORMATION CONTACT:**

Michele Elmore, by U.S. mail (see **ADDRESSES**), via phone at 912-403-1873, or by email at [michele\\_elmore@fws.gov](mailto:michele_elmore@fws.gov). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** We, the Fish and Wildlife Service (Service), announce receipt of an application from Tri-State Solar Project, LLC (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed threatened eastern indigo snake (*Drymarchon couperi*)

incidental to the construction and operation of a solar facility development in Decatur County, Georgia. We request public comment on the application, which includes the applicant's habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as "low effect," and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

**Proposed Project**

The applicant requests a 10-year ITP to take three individual eastern indigo snakes via the conversion of approximately 431 acres (ac) of occupied nesting, foraging, and sheltering habitat incidental to the construction and operation of a solar facility development on a 3,611-ac parcel on the north side of Georgia State Route 253 and east side of Georgia State Route 310, approximately 4 miles west of Bainbridge, in Decatur County, Georgia. The applicant proposes to avoid and minimize take of the species to the greatest extent possible by implementing the Service's Standard Protection Measures for the eastern indigo snake during implementation of activities associated with the construction and operation of the solar facility. The applicant proposes mitigation for take of the eastern indigo snake by contributing \$339,412.50 to the Wildlife Foundation of Florida—Eastern Indigo Snake Conservation Fund. These funds will be used in Georgia for the management or restoration of eastern indigo snake habitat, purchase of occupied habitat, purchase of development rights for occupied habitat, or a combination thereof. The Service would require the applicant to provide the contribution of the funds prior to engaging in any construction of the project.

**Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal

identifying information, we cannot guarantee that we will be able to do so.

**Our Preliminary Determination**

The Service has made a preliminary determination that the applicant's proposed project, including the construction and operation of the solar facility, would individually and cumulatively have a minor effect on the eastern indigo snake and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a "low-effect" ITP that individually or cumulatively would have a minor effect on the eastern indigo snake and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A "low-effect" incidental take permit is one that would result in (1) minor or negligible effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonable foreseeable actions, would not result in significant cumulative effects to the human environment.

**Next Steps**

The Service will evaluate the application and the comments to determine whether to issue the requested ITP. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER 0053113 to Tri-State Solar Project, LLC.

**Authority**

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1500-1508 and 43 CFR 46).

**Peter Maholland,**

*Field Supervisor, Georgia Ecological Services Office.*

[FR Doc. 2023-03635 Filed 2-21-23; 8:45 am]

**BILLING CODE 4333-15-P**

**DEPARTMENT OF THE INTERIOR****National Park Service**

[NPS–WASO–NRSS–EQD–SSB–  
NPS0034513; PPAKAKROR4  
PPMPRLE1Y.LS0000 233P103601; OMB  
Control Number 1024–0262]

**Agency Information Collection  
Activities; Community Harvest  
Assessments for Alaskan National  
Parks, Preserves, and Monuments**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of information collection;  
request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before April 24, 2023.

**ADDRESSES:** Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR–ICCO), 12201 Sunrise Valley Drive (MS–242), Reston, Virginia 20192 (mail); or to [phadrea\\_ponds@nps.gov](mailto:phadrea_ponds@nps.gov) (email). Please reference OMB Control Number 1024–0262 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Nicole Braem, Cultural Anthropologist, Bering Land Bridge National Preserve, Nome, AK 99762; or by email at [nicole\\_braem@nps.gov](mailto:nicole_braem@nps.gov); or by telephone at 907–443–6107. Please reference OMB Control Number 1024–0262 in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information

collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) is the collection necessary to the proper functions of the NPS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Abstract:** Under the provisions of the Alaska National Interest Lands Conservation Act (ANILCA), qualified rural residents are provided the opportunity to harvest fish, wildlife, and other subsistence resources in national parks, preserves, and monuments in Alaska. The NPS is seeking an extension to continue surveying Alaska residents who customarily and traditionally engage in subsistence activities within NPS units.

The collection includes the following Alaskan National Parks, Preserves, and Monuments: (1) Aniakchak National Monument (ANIA), (2) Bering Land Bridge National Preserve (BELA), (3) Cape Krusenstern National Monument (CAKR), (4) Gates of the Arctic National Park and Preserve (GAAR), (5) Kobuk Valley National Park (KOVA), (6) Noatak National Preserve (NOAT), (7) Wrangell-St. Elias National Park and Preserve (WRST), and (9) Yukon-Charley Rivers National Preserve (YUCH). This survey is conducted through in-person interviews. A facilitator collects information about harvests, uses, and sharing of subsistence resources. Search and harvest areas are also mapped over the course of the interview. The information from this collection will be used by the NPS, the Federal Subsistence Board, the State of Alaska, and local/regional

advisory councils in making recommendations and informing decisions regarding seasons and harvest limits of fish, wildlife, and plants in the region which communities have customarily and traditionally used.

**Title of Collection:** Community Harvest Assessments for Alaskan National Parks, Preserves, and Monuments.

**OMB Control Number:** 1024–0262.

**Form Number:** None.

**Total Estimated Number of Annual Respondents:** 1,835.

**Total Estimated Number of Annual Responses:** 1,835.

**Estimated Completion Time per Response:** Varies from 1 hour to 10 minutes depending on respondent and/or activity.

**Total Estimated Number of Annual Burden Hours:** 1,463 hours.

**Type of Review:** Extension of a currently approved collection.

**Respondent's Obligation:** Voluntary.

**Frequency of Collection:** One-time.

**Total Estimated Annual Nonhour Burden Cost:** None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Phadrea Ponds,**

*Information Collection Clearance Officer,  
National Park Service.*

[FR Doc. 2023–03657 Filed 2–21–23; 8:45 am]

**BILLING CODE 4312–52–P**

**DEPARTMENT OF THE INTERIOR****National Park Service**

[NPS–NRSS–BRD–NPS0034723;  
PPWONRADB0PPMRSNR1Y.NM0000 (223);  
OMB Control Number 1024–0275]

**Agency Information Collection  
Activities; Submission to the Office of  
Management and Budget for Review  
and Approval; Using Web and Mobile-  
Based Applications During NPS Citizen  
Science Events**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of information collection;  
request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before March 24, 2023.

**ADDRESSES:** Written comments and suggestions on the information collection requirements should be submitted by the date specified above in **DATES** to <http://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. Please provide a copy of your comments to the NPS Information Collection Clearance Officer (ADIR-ICCO), 12201 Sunrise Valley Drive, (MS-242), Reston, VA 20191 (mail); or [phadrea\\_ponds@nps.gov](mailto:phadrea_ponds@nps.gov) (email). Please reference OMB Control Number 1024-0275 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Timothy Watkins, Science Access & Engagement Coordinator; [tim\\_watkins@nps.gov](mailto:tim_watkins@nps.gov) (email); or 202-513-7189 (phone). Please reference OMB Control Number 1024-0275 in the subject line of your comments. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point of contact in the United States. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on November 10, 2022 (87 FR 67955). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility.

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used.

(3) Ways to enhance the quality, utility, and clarity of the information to be collected.

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Abstract:** The NPS is authorized by the National Park Service Protection Interpretation and research in System (54 U.S.C. 100701) to collect this information. The NPS is requesting approval to use mobile and web-based applications (*e.g.*, iNaturalist, eBird, etc.) to collect natural history observational information from park visitors during citizen science events. The information will be used to substantiate the occurrence of plant, wildlife, and invertebrate species within NPS units during these events. By using citizen science applications, this information will be immediately available to all parks and others interested in species identification and advancing the knowledge of the natural world. Using mobile and web-based applications will enable parks to increase the number of natural history observation records that will contribute to greater understanding of the biodiversity within the park systems.

**Title of Collection:** Using web and mobile-based applications during NPS Citizen Science events.

**OMB Control Number:** 1024-0275.

**Form Number:** None.

**Type of Review:** Extension of a currently approved collection.

**Respondents/Affected Public:** General public, individual households, and non-federal scientists.

**Total Estimated Number of Annual Respondents:** 7,500.

**Total Estimated Number of Annual Responses:** 112,500.

**Estimated Completion Time per Response:** 5 minutes.

**Total Estimated Number of Annual Burden Hours:** 9,375 hours.

**Respondent's Obligation:** Voluntary.

**Frequency of Collection:** One time.

**Total Estimated Annual Nonhour Burden Cost:** None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Phadrea Ponds,**

Information Collection Clearance Officer,  
National Park Service.

[FR Doc. 2023-03659 Filed 2-21-23; 8:45 am]

**BILLING CODE 4312-52-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-703 (Fifth Review)]

### Furfuryl Alcohol From China

#### Determination

On the basis of the record<sup>1</sup> developed in the subject five-year review, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that revocation of the antidumping duty order on furfuryl alcohol from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

#### Background

The Commission instituted this review on July 1, 2022 (87 FR 39559) and determined on October 4, 2022 that it would conduct an expedited review (88 FR 2132, January 12, 2023).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on February 15, 2023. The views of the Commission are contained in USITC Publication 5407 (February

<sup>1</sup> The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

2023), entitled *Furfuryl Alcohol from China: Investigation No. 731-TA-703 (Fifth Review)*.

By order of the Commission.

Issued: February 15, 2023.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2023-03598 Filed 2-21-23; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB 1140-NEW]

#### Agency Information Collection Activities; Proposed eCollection of eComments Requested; New Collection; Drug Activity Questionnaire—ATF Form 8620.12

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection (IC) is also being published to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and will be accepted for 60 days until April 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact: Lakisha Gregory, Chief, Personnel Security Division, by mail at 99 New York Avenue NE, Mailstop 1.E-300, Washington, DC 20226, by email at [Lakisha.Gregory@atf.gov](mailto:Lakisha.Gregory@atf.gov), or by telephone at 202-648-9260.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of This Information Collection:

1. *Type of Information Collection (check justification or Form 83):* New collection.

2. *The Title of the Form/Collection:* Drug Activity Questionnaire.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

*Form number (if applicable):* ATF Form 8620.12.

*Component:* Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* Individuals or households.

*Other (if applicable):* None.

*Abstract:* The Drug Activity Questionnaire—ATF Form 8620.12 will be used to collect personally identifiable information (PII), which will be used to determine if a candidate (respondent) can be granted access to ATF information, IT systems, and/or unescorted access to ATF facilities. This collection includes information relating to ATF drug policy requirements.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,000 respondents will provide information to complete this form once annually, and it will take approximately 10 minutes to complete the form.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 333 hours, which is equal to 2,000 (total respondents) \* 1 (# of response per respondent) \* .16665 (10 minutes or the time taken to prepare each response).

If additional information is required contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC 20530.

Dated: February 15, 2023.

**John R. Carlson,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2023-03589 Filed 2-21-23; 8:45 am]

BILLING CODE 4410-FY-P

## DEPARTMENT OF JUSTICE

[OMB Number 1122-0032]

#### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of Currently Approved Collection

**AGENCY:** Office on Violence Against Women, Department of Justice.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 30 days until March 24, 2023.

#### FOR FURTHER INFORMATION CONTACT:

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

### Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Justice for Families Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122-0032. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the current grantees under the Justice for Families Program. The Justice for Families Program improves the response of all aspects of the civil and criminal justice system to families with a history of domestic violence, dating violence, sexual assault and stalking, or in cases involving allegations of child sexual abuse. Eligible applicants are states, units of local government, courts, Indian tribal governments, nonprofit organizations, legal service providers, and victim services providers. The affected public includes the approximately 70 Justice for Families Program grantees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 70 respondents (Justice for Families Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Justice for Families Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 140 hours, that is 70 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required, contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC 20530.

Dated: February 15, 2023.

**John R. Carlson,**

*Department Clearance Officer for PRA, Policy and Planning Staff, U.S. Department of Justice.*

[FR Doc. 2023-03591 Filed 2-21-23; 8:45 am]

**BILLING CODE 4410-FX-P**

### DEPARTMENT OF JUSTICE

[OMB Number 1121-0094]

#### Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired: Annual Survey of Jails

**AGENCY:** Bureau of Justice Statistics, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until April 24, 2023.

**FOR FURTHER INFORMATION CONTACT:** If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Zhen Zeng, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: [Zhen.Zeng@usdoj.gov](mailto:Zhen.Zeng@usdoj.gov); telephone: 202-598-9955).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

### Overview of This Information Collection

1. *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

2. *Title of the Form/Collection:* Annual Survey of Jails (ASJ).

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The ASJ contains one form: CJ-5: 2023 Annual Survey of Jails and 2025 Annual Survey of Jails. The applicable component within the Department of Justice is the Bureau of Justice Statistics (BJS), in the Office of Justice Programs. The ASJ is fielded every year except in the years when BJS conducts the Census of Jails (OMB Control No. 1121-0100). BJS requests clearance for the 2023 and 2025 ASJ under OMB Control No. 1121-0094. In 2024, BJS plans to conduct the Census of Jails and will not field the ASJ in the same year. The ASJ was last approved under OMB Control No. 1121-0094 (exp. date 06/30/2023).

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will include approximately 940 jails, representing approximately 2,850 local jails (city, county, regional, and private). The ASJ is the only national collection that tracks annual changes in the local jail population in the United States and provides national estimates on the number of persons confined in jails, the number of persons jails supervised in programs outside jail, characteristics of the jail population, counts of admissions and releases, and number of staff employed. Policymakers, correctional administrators, and government officials use the ASJ data to develop new policies and procedures, plan budgets, and maintain critical oversight.



5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The 2023 and 2025 ASJ will collect data from approximately 940 jails (see table 1). For each data collection cycle, we estimate an average burden of 80 minutes for the updated survey form CJ-5. If needed, jail respondents will be contacted by email or telephone to verify data quality issues. We estimate that data quality follow-up is needed for 70% of the jails (658) in each cycle and will run an average of 10 minutes for each jail. In addition, we estimate that 10% of the jails (94) in each cycle will be contacted to verify point-of-contact information, which takes 5 minutes each on average. In total, the ASJ will incur a burden estimate of 1,371 hours, or 88 minutes per respondent, each year in 2023 and 2025. These estimates are based on previous estimates of item burden and input received from participants in the 2018 jail collection cognitive test (generic OMB clearance, Control No. 1121-0249).

If additional information is required, contact: John R. Carlson, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC 20530.

Dated: February 15, 2023.

**John R. Carlson,**

*Department Clearance Officer for PRA, Policy and Planning Staff, U.S. Department of Justice.*

[FR Doc. 2023-03592 Filed 2-21-23; 8:45 am]

**BILLING CODE 4410-18-P**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

#### Data Users Advisory Committee; Request for Nominations

**AGENCY:** Bureau of Labor Statistics (BLS), Labor.

**ACTION:** Request for nominations to the BLS Data Users Advisory Committee.

**SUMMARY:** The BLS is soliciting new members for its Data Users Advisory Committee (DUAC). The current membership expires on May 1, 2023.

**DATES:** Nominations for the DUAC membership should be emailed by March 8, 2023.

**ADDRESSES:** Nominations for the DUAC membership should be sent via email to [DUACMembernominations@bls.gov](mailto:DUACMembernominations@bls.gov). Nominations are only being accepted

through email as BLS is in maximum telework status pending its relocation to Suitland. Please submit in Word or PDF format.

**FOR FURTHER INFORMATION CONTACT:** Ebony Davis, Program Analyst, U.S. Bureau of Labor Statistics. Telephone: 202-691-6636. This is not a toll-free number. Email: [Davis.Ebony@bls.gov](mailto:Davis.Ebony@bls.gov).

**SUPPLEMENTARY INFORMATION:** The DUAC provides advice to the Bureau of Labor Statistics from the points of view of data users from various sectors of the U.S. economy, including the labor, business, research, academic, and government communities, on matters related to the analysis, dissemination, and use of the Bureau's statistics, on its published reports, and on gaps between or the need for new Bureau statistics.

The Committee consists of 20 members and will be chosen from a cross-section of individuals who represent a balance of expertise across a broad range of BLS program areas, including employment and unemployment statistics, occupational safety and health statistics, compensation measures, price indexes, and productivity measures; or other areas related to the subject matter of BLS programs. BLS invites persons interested in serving on the DUAC to submit their names for consideration for committee membership.

BLS intends to renew membership in the DUAC for another three years. The BLS operates over two dozen surveys that measure employment and unemployment, compensation, worker safety, productivity, and consumer and producer price movements. BLS provides a wealth of economic data and analyses to support public and private decision making. The DUAC was established to provide advice to the Commissioner of Labor Statistics on the priorities of data users, suggestions concerning the addition of new programs, changes in emphasis of existing programs or cessation of obsolete programs, and advice on potential innovations in data analysis, dissemination, and presentation.

**Nominations:** BLS is looking for committed DUAC members who have a strong interest in, and familiarity with, BLS data. The Agency is looking for nominees who use and have a comprehensive understanding of economic statistics. The U.S. Bureau of Labor Statistics is committed to bringing greater diversity of thought, perspective, and experience to its advisory committees. Nominees from all races, gender, age, and disabilities are encouraged to apply. Interested persons may nominate themselves or may

submit the name of another person who they believe to be interested in and qualified to serve on the DUAC. Nominations may also be submitted by organizations. Nominations should include the name, address, and telephone number of the candidate. Each nomination should include a summary of the candidate's training or experience relating to BLS data specifically, or economic statistics more generally. BLS will conduct a basic background check of candidates before their appointment to the DUAC. The background check will involve accessing publicly available, internet-based sources.

**Authority:** This notice was prepared in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2.

Signed at Washington, DC, this 15th day of February 2023.

**Eric Molina,**

*Acting Chief, Division of Management Systems.*

[FR Doc. 2023-03633 Filed 2-21-23; 8:45 am]

**BILLING CODE 4510-24-P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2023-0001]

#### PSM On-Site Consultation Agreements; in Use Without an OMB Number and Seeks Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning the proposal of a new collection subject to Office of Management and Budget's (OMB) approval for the information collection requirements specified in the PSM On-Site Consultation Agreements.

**DATES:** Comments must be submitted (postmarked, sent, or received) by April 24, 2023.

#### ADDRESSES:

**Electronically:** You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

**Docket:** To read or download comments or other material in the docket, go to <https://www.regulations.gov>.

[www.regulations.gov](http://www.regulations.gov). Documents in the docket are listed in the <https://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627) for assistance in locating docket submissions.

**Instructions:** All submissions must include the agency name and OSHA docket number OSHA-2023-0001 for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

**FOR FURTHER INFORMATION CONTACT:**

Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693-2222.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary

duplication of effort in obtaining information (29 U.S.C. 657).

Section 7(c)(1) of the Occupational Safety and Health Act (i.e., "the OSH Act" or "the Act") authorizes the Secretary of Labor to, "with the consent of any State or political subdivision thereof, accept and use the services, facilities, and personnel of any agency of such State or subdivision with reimbursement." Section 21(c) of the Act authorizes the Secretary of Labor to "consult with and advise employers and workers . . . as to effective means of preventing occupational illnesses and injuries." To satisfy the intent of these and other sections of the Act, the Occupational Safety and Health Administration (OSHA) codified the terms that govern cooperative agreements between OSHA and State governments or U.S. Territories whereby State agencies and U.S. Territories provide On-Site Consultation services to private sector, small business employers to assist them in complying with the requirements of the Act. The terms were codified as the On-Site Consultation Program regulations (29 CFR part 1908).

OSHA's Compliance Assistance Authorization Act of 1998 (CAAA) amended Section 21 of the OSH Act by adding paragraph (d), authorizing the Secretary of Labor to enter into agreements with the States and U.S. Territories to provide On-Site Consultation services, and established rules under which employers may qualify for an inspection exemption. To achieve the intent of the CAAA, OSHA published a final rule to amend 29 CFR part 1908. The rule became effective on December 26, 2000. The On-Site Consultation Program regulations specify services to be provided, as well as practices and procedures to be followed by the State On-Site Consultation programs. The Federal government provides 90 percent of funds for On-Site Consultation services.

**II. Special Issues for Comment**

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for

example, by using automated or other technological information collection, and transmission techniques.

**III. Proposed Actions**

OSHA is requesting that OMB approves the new information collection requirements contained in the PSM On-Site Consultation Agreements. The agency is requesting that OMB approves 26,766 burden hours for this collection.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

**Type of Review:** In Use Without an OMB Number.

**Title:** PSM On-Site Consultation Agreements.

**OMB Control Number:** 1218-0NEW.

**Affected Public:** Business or other for-profits.

**Number of Respondents:** 34.

**Number of Responses:** 6,841.

**Frequency of Responses:** On occasion.

**Average Time per Response:** Varies.

**Estimated Total Burden Hours:** 26,766.

**Estimated Cost (Operation and Maintenance):** \$0.

**IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions**

You may submit comments in response to this document as follows: (1) electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (fax); if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at 202-693-1648; or (3) by hard copy. Please note: While OSHA's Docket Office is continuing to accept and process submissions by regular mail due to the COVID-19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the docket by hand, express mail, messenger, and courier service. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (OSHA-2023-0001). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so that the agency can attach them to your comments.

Due to security procedures, the use of regular mail may cause a significant delay in the receipt of comments.

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the <https://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download from this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <https://www.regulations.gov> website to submit comments and access the docket is available at the website's "User Tips" link. Contact the OSHA Docket Office at (202) 693-2350, (TTY (877) 889-5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

#### V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8-2020 (85 FR 58393).

Signed at Washington, DC.

**James S. Frederick,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2023-03638 Filed 2-21-23; 8:45 am]

**BILLING CODE 4510-26-P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

#### Subject 60-Day Notice for the "ArtsHERE Grant Program Forms" Proposed Collection; Comment Request

**AGENCY:** National Endowment for the Arts.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork

Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed collection of subgrantee information for the ArtsHERE grant program. A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

**DATES:** Written comments must be submitted to the office listed in the address section below within 60 days from the date of this publication in the **Federal Register**.

**ADDRESSES:** Send comments to Sunil Iyengar, National Endowment for the Arts, via email ([research@arts.gov](mailto:research@arts.gov)).

**SUPPLEMENTARY INFORMATION:** The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Dated: February 16, 2023.

**Bonita Smith,**

*Director, Office of Administrative Services & Contracts, National Endowment for the Arts.*

[FR Doc. 2023-03672 Filed 2-21-23; 8:45 am]

**BILLING CODE 7537-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-445 and 50-446; NRC-2022-0183]

### Notice of Intent To Conduct Scoping Process and Prepare Environmental Impact Statement; Vistra Operations Company LLC; Comanche Peak Nuclear Power Plant, Units 1 and 2

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Intent to conduct scoping process and prepare environmental impact statement; public scoping meeting, and request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) will conduct an extended scoping process to gather information necessary to prepare an environmental impact statement (EIS) to evaluate the environmental impacts for the proposed license renewal of the operating licenses for Comanche Peak Nuclear Power Plant (CPNPP), Units 1 and 2. The NRC is seeking stakeholder input on this action and has scheduled an additional public scoping meeting that will take place in Glen Rose, Texas.

**DATES:** The NRC will hold a public scoping meeting on February 23, 2023, from 7 p.m. to 9 p.m. local time. Submit comments on the scope of the EIS by March 13, 2023. Comments received after March 13, 2023, will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. See Section IV, "Public Scoping Meeting," of this notice for additional information.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website.

- **Federal Rulemaking Website:** Go to <https://www.nrc.gov> and search for Docket ID NRC-2022-0183. Address questions about Docket IDs in [Regulations.gov](https://www.nrc.gov) to Stacy Schumann; telephone: 301-415-0624; email: [Stacy.Schumann@nrc.gov](mailto:Stacy.Schumann@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **Email comments to:** [ComanchePeakEIS@nrc.gov](mailto:ComanchePeakEIS@nrc.gov).

- **Attend the transcribed public meeting:** February 23, 2023.

- **Mail comments to:** Office of Administration, Mail Stop: TWFN-7-A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Tam Tran, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3617, email: [Tam.Tran@nrc.gov](mailto:Tam.Tran@nrc.gov).

#### **SUPPLEMENTARY INFORMATION:**

### **I. Obtaining Information and Submitting Comments**

#### *A. Obtaining Information*

Please refer to Docket ID NRC–2022–0183 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://regulations.gov> and search for Docket ID NRC–2022–0183.
- *NRC’s Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the NRC Library at <https://www.nrc.gov/readingrm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC’s Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov). The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

- *NRC’s PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC’s PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov) or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

#### *B. Submitting Comments*

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2022–0183 in your comment submission to ensure that the NRC can make your comment submission available to the public in this docket. In addition, electronic comments may be sent by email to the

NRC at [ComanchePeakEIS@nrc.gov](mailto:ComanchePeakEIS@nrc.gov), and should be sent no later than March 13, 2023, to be considered in the scoping process. You may also attend the transcribed public meeting on February 23, 2023, where comments will be collected.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

### **II. Discussion**

On October 3, 2022, the NRC received an application for the renewal of Facility Operating License Nos. NPF–87 and NPF89, which would authorize Vistra Operations Company LLC (Vistra, the applicant) to operate CPNPP, Units 1 and 2 for an additional 20 years of operation if granted (ADAMS Accession No. ML22276A082). Vistra’s submission initiated the NRC’s proposed action: determining whether to grant or deny Vistra’s license renewal application for power reactor operating licenses, which, if granted, would authorize CPNPP Units 1 and 2 to operate for an additional 20 years. The CPNPP units are pressurized-water reactors designed by Westinghouse Electric Corporation and are in Somervell County, Texas. The current operating license for Unit 1 expires at midnight on February 8, 2030, and the current operating license for Unit 2 expires at midnight on February 2, 2033. The license renewal application was submitted pursuant to part 54 of title 10 of the *Code of Federal Regulations* (10 CFR) and included an environmental report (ER). A notice of receipt and availability of the application was published in the **Federal Register** (FR) on October 31, 2022 (87 FR 65617, ML22285A074). A notice of acceptance for docketing of the application and opportunity for hearing regarding the license renewal of the

CPNPP Units 1 and 2 operating licenses was published on December 1, 2022 (87 FR 73798, ML22297A006) and is available in [Regulations.gov](https://www.regulations.gov) by searching for Docket ID NRC–2022–0183.

### **III. Request for Comments**

This notice informs the public of the NRC’s intention to conduct an extended environmental scoping to prepare an EIS related to Vistra’s license renewal application, and to provide the public an additional opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29.

The regulations in 36 CFR 800.8, “Coordination with the National Environmental Policy Act,” allow agencies to use their National Environmental Policy Act of 1969 (NEPA) process to fulfill the requirements of Section 106 of the National Historic Preservation Act (NHPA). Therefore, pursuant to 36 CFR 800.8(c), the NRC intends to use its process and documentation for the preparation of the EIS on the proposed action to comply with Section 106 of the NHPA in lieu of the procedures set forth at 36 CFR 800.3 through 800.6.

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, Vistra submitted an ER as part of the license renewal application. The ER was prepared pursuant to 10 CFR part 51 and is publicly available (ADAMS Accession No. ML22297A246). The ER may also be viewed on the NRC public website at <https://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>. In addition, the license renewal application, including the ER are available for public review at the Somervell County Library, 108 Allen Dr., Glen Rose, TX 76043 and Hood County Library, 222 N Travis St., Granbury, TX 76048.

As required by 10 CFR 51.95, the NRC intends to gather the information necessary to prepare a plant-specific supplement 60 to the NRC’s NUREG–1437, “Generic Environmental Impact Statement for License Renewal of Nuclear Plants” (ADAMS Package Accession No. ML13107A023) (GEIS), related to the application for license renewal of the CPNPP Units 1 and 2. This notice is being published in accordance with NEPA and the NRC’s regulations found at 10 CFR part 51.

Supplement 60 to the GEIS will evaluate the environmental impacts of license renewal for CPNPP Units 1 and 2, and reasonable alternatives thereto. Possible alternatives to the proposed action include the no action alternative and reasonable alternative energy sources.

As part of its environmental review process, the NRC will first conduct scoping for the supplement 60 to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement 60 to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the supplement 60 to the GEIS will be used to accomplish the following:

a. Define the proposed action, which is to be the subject of the supplement 60 to the GEIS;

b. Determine the scope of the supplement 60 to the GEIS and identify the significant issues to be analyzed in depth;

c. Identify and eliminate from detailed study those issues that are peripheral or are not significant; or were covered by a prior environmental review;

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of, the scope of the supplement 60 to the GEIS being considered;

e. Identify other environmental review and consultation requirements related to the proposed action;

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the NRC's tentative planning and decision-making schedule;

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement 60 to the GEIS to the NRC and any cooperating agencies; and

h. Describe how the supplement 60 to the GEIS will be prepared, including any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

a. The applicant, Vistra;

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;

d. Any affected Indian Tribe;

e. Any person who requests or has requested an opportunity to participate in the scoping process; and

f. Any person who has petitioned or intends to petition for leave to intervene under 10 CFR 2.309.

#### IV. Public Scoping Meeting

In accordance with 10 CFR 51.26(b), the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS.

The NRC is announcing that it will hold an additional public scoping meeting for the CPNPP Units 1 and 2 license renewal supplement 60 to the GEIS. A court reporter will record and transcribe all comments received during the meeting. To be considered, comments must be provided either at the transcribed public meeting or in writing, as discussed in the **ADDRESSES** section of this document. The date and time for this additional public scoping meeting is as follows:

Meeting	Date	Time	Location
Public EIS Scoping .....	Thursday, 2/23/2023 .....	7 p.m. to 9 p.m., as necessary, local time.	Somervell County Expo Center, 202 BO GIBBS BLVD., W Hwy. 67, Glen Rose, TX 76043.

In addition, the NRC staff will host informal discussions one hour before the start of the session at the same location. The staff will not accept formal comments on the proposed scope of the supplement 60 to the GEIS during this informal discussion.

The public scoping meeting will include: (1) an overview by the NRC staff of the environmental and safety review processes, the proposed scope of the supplement 60 to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on environmental issues or the proposed scope of the CPNPP license renewal supplement 60 to the GEIS.

Persons interested in attending this public meeting should monitor the NRC's Public Meeting Schedule at <https://www.nrc.gov/pmns/mtg> for additional information and agenda for the meeting. Please contact Tam Tran no later than February 22, 2023, if accommodations, including special equipment or translation is needed to attend or to provide comments, so that the NRC staff can determine whether the request can be accommodated.

Participation in the scoping process for the CPNPP license renewal supplement 60 to the GEIS does not entitle participants to become parties to the proceeding to which the supplement 60 to the GEIS relates. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

Dated: February 16, 2023.

For the Nuclear Regulatory Commission.

**John M. Moses,**

*Deputy Director, Division of Rulemaking, Environment, and Financial Support, Office of Nuclear Material Safety, and Safeguards.*

[FR Doc. 2023-03668 Filed 2-21-23; 8:45 am]

**BILLING CODE 7590-01-P**

#### POSTAL REGULATORY COMMISSION

**[Docket Nos. CP2023-113; CP2023-114; Order No. 6442]**

#### Competitive Price Changes

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is recognizing a recently filed Postal Service document with the Commission

concerning changes in rates and classifications of general applicability for competitive products. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* March 17, 2023.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

#### SUPPLEMENTARY INFORMATION:

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- I. Introduction and Overview
- II. Summary of Changes
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## I. Introduction and Overview

On February 10, 2023, the Postal Service filed notice with the Commission concerning changes in rates and classifications of general applicability for First-Class Package Service.<sup>1</sup> In support of the First-Class Package Service Notice, the Postal Service filed the Governors' Decision supporting the request, with an annex including proposed changes to the Mail Classification Schedule (MCS) and a Competitive Product Contribution & Cost Coverage Analysis, and a non-public annex showing Fiscal Year (FY) 2023 projected volumes, revenues, attributable costs, contribution, and cost coverage for each product.<sup>2</sup> Proposed price and classification changes are incorporated into the proposed changes to the MCS. *See* First-Class Package Service Notice at 1–2.

Also on February 10, 2023, the Postal Service filed notice with the Commission concerning changes in rates and classifications of general applicability for Parcel Select.<sup>3</sup> In support of the Parcel Select Notice, the Postal Service filed the Governors' Decision supporting the request, with an annex including proposed changes to the MCS and a Competitive Product Contribution & Cost Coverage Analysis, and a non-public annex showing FY 2023 projected volumes, revenues, attributable costs, contribution, and cost coverage for each product.<sup>4</sup> Proposed price and classification changes are incorporated into the proposed changes to the MCS. *See* Parcel Select Notice at 2.

## II. Summary of Changes

*First-Class Package Service changes.* The proposed changes to the MCS attached to Governors' Decision No. 23–

1 show the Postal Service's planned price changes for First-Class Package Service. Further classification changes for First-Class Package Service are summarized as follows:

- First-Class Package Service would be renamed "USPS Ground Advantage."
- Certificate of Mailing and Certified Mail would be removed from the list of available optional features.
- Dimensional Weight pricing would be made available up to Zone 9.
- The Dimension Noncompliance Fee would become applicable to the product.

First-Class Package Service Notice at 2–5; Governors' Decision No. 23–1 at 1. According to the Postal Service, its proposed changes to First-Class Package Service "flow from" its proposals in Docket Nos. MC2022–81 and MC2022–82 "to expand and enhance the First-Class Package Service product[.]"<sup>5</sup>

The Postal Service states that it "plans to interpret all contractual references" in negotiated service agreements (NSAs) "as USPS Ground Advantage" and "[w]hen necessary" to "execute amendments with customers to clarify any contract interpretation issues." First-Class Package Service Notice at 3–4. According to the Postal Service, "[n]ew contracts utilizing the new USPS Ground Advantage name will be executed with new customers over the coming months." *Id.* at 4.

*Parcel Select changes.* The proposed changes to the MCS attached to Governors' Decision No. 23–2 show the Postal Service's planned price changes for Parcel Select. Further classification changes for Parcel Select are summarized as follows:

- A new Destination Hub (DHub) price category would be established.
- The machinable and nonmachinable price tables would be eliminated.
- The place of entry and zone options across the existing Parcel Select Destination Entry and Parcel Select Lightweight price tables would be aligned (including eliminating distinct Non-Destination Entered price categories for Parcel Select Lightweight). Parcel Select Notice at 2–4; Governors' Decision No. 23–2 at 1. According to the Postal Service, "[t]hese changes are predominantly structural in

nature, to simplify and streamline the Parcel Select product across all price categories." Parcel Select Notice at 1.

*Planned effective date.* According to the Postal Service, the planned effective date of the changes proposed in the First-Class Package Service Notice and the Parcel Select Notice is July 9, 2023. First-Class Package Service Notice at 1; Parcel Select Notice at 1, 2.

## III. Initial Administrative Actions

The Commission establishes Docket No. CP2023–113 to consider matters raised by the First-Class Package Service Notice and Docket No. CP2023–114 to consider matters raised by the Parcel Select Notice. The instant dockets involve similar issues pertaining to simplifying and streamlining product offerings and price changes for those offerings. The Commission previously consolidated dockets related to simplifying and streamlining the First-Class Package Service and Parcel Select products.<sup>6</sup> Accordingly, the Commission will consolidate Docket No. CP2023–113 and Docket No. CP2023–114. *See* 39 CFR 3010.104.

The Commission invites comments on the First-Class Package Service Notice and the Parcel Select Notice. Comments are due no later than March 17, 2023. The Postal Service's notices are available on the Commission's website at [www.prc.gov](http://www.prc.gov).

Pursuant to 39 U.S.C. 505, Arif Hafiz is appointed to serve as Public Representative to represent the interests of the general public in this docket.

## IV. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. CP2023–113 to consider the matters raised by the First-Class Package Service Notice.

2. The Commission establishes Docket No. CP2023–114 to consider the matters raised by the Parcel Select Notice.

3. The Commission consolidates Docket No. CP2023–113 and Docket No. CP2023–114.

4. Comments are due no later than March 17, 2023.

5. Pursuant to 39 U.S.C. 505, the Commission appoints Arif Hafiz to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

6. The Secretary shall arrange for publication of this order in the **Federal Register**.

<sup>6</sup> *See* Docket Nos. MC2022–81 and MC2022–83, Notice and Order Concerning Removal of USPS Retail Ground from the Competitive Product List and Competitive Classification Changes, July 15, 2022, at 3 (Order No. 6230).

<sup>1</sup> USPS Notice of Changes in Rates and Classifications of General Applicability for First-Class Package Service, February 10, 2023 (First-Class Package Service Notice).

<sup>2</sup> *See* First-Class Package Service Notice, Decision of the Governors of the United States Postal Service on Changes in Rates and Classifications of General Applicability for Competitive Products (Governors' Decision No. 23–1) (Governors' Decision No. 23–1). The Postal Service also filed public, redacted versions of materials filed under seal and an Application of the United States Postal Service for Non-Public Treatment of Materials. First-Class Package Service Notice at 2.

<sup>3</sup> USPS Notice of Changes in Rates and Classifications of General Applicability for Parcel Select, February 10, 2023 (Parcel Select Notice).

<sup>4</sup> Parcel Select Notice, Decision of the Governors of the United States Postal Service on Changes in Rates and Classifications of General Applicability for Competitive Products (Governors' Decision No. 23–2) (Governors' Decision No. 23–2). The Postal Service also filed public, redacted versions of materials filed under seal and an Application of the United States Postal Service for Non-Public Treatment of Materials. Parcel Select Notice at 2.

<sup>5</sup> First-Class Package Service Notice at 1; *see* Docket Nos. MC2022–81 and MC2022–82, USPS Notice of Effective date, February 10, 2023. The Commission approved the Postal Service's proposals in Docket Nos. MC2022–81 and MC2022–82. *See* Docket Nos. MC2022–81 and MC2022–82, Order Removing USPS Retail Ground From the Competitive Product List and Approving Competitive Classification Changes to First-Class Package Service and Parcel Select, October 28, 2022 (Order No. 6318).

By the Commission.

Erica A. Barker,  
Secretary.

[FR Doc. 2023-03569 Filed 2-21-23; 8:45 am]

BILLING CODE 7710-FW-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96932; File No. SR-CboeBZX-2023-010]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Applicable Exchange Rules, Usage of Data Feeds, To Disclose That the Exchange Will Utilize Direct Data Feeds From MEMX LLC

February 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 9, 2023, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) proposes to update Rule 11.26(a), Usage of Data feeds, to disclose that the Exchange will utilize direct data feeds from MEMX LLC (“MEMX”) when performing: (i) order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes. The Exchange has designated the proposed rule change as noncontroversial and provided the Commission with notice required by Rule 19b-4(f)(6)(iii) under the Act. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to update Exchange Rule 11.26(a)<sup>3</sup> regarding the public disclosure of the sources of data that the Exchange utilizes when performing: (i) order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes. The Exchange currently utilizes MEMX market data from the Consolidated Quotation system (“CQS”)/UTP Quotation Data Feed (“UQDF”) for these purposes on BZX. The Exchange intends to begin to utilize MEMX’s direct feeds in place of market data from the CQS/UQDF. Accordingly, the Exchange seeks to amend Exchange Rule 11.26(a) to reflect that the Exchange will utilize MEMX’s direct feeds in place of market data from the CQS/UQDF when performing order handling, order execution, routing, and related compliance processes for equity securities on BZX. Once the Exchange begins to utilize direct feeds from MEMX, the Exchange will begin to utilize the CQS/UQDF as a secondary source of data from MEMX on BZX.

###### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>4</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>5</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that its proposal to update Exchange Rule 11.26(a) to include the MEMX direct feeds will ensure that the Rule correctly identifies and publicly states on a market-by-market basis all the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. The proposed rule change also removes impediments to and perfects the mechanisms of a free and open market to protect investors and the public interest because it provides additional specificity, clarity and transparency.

##### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes the proposal will enhance competition by because including all of the exchanges enhances transparency and enables investors to better assess the quality of the Exchange’s execution and routing services. The Exchange also believes the proposal will enhance competition because it will potentially enhance the performance of its order handling and execution of orders in equity securities by receiving market data directly from MEMX. Finally, the proposed rule change will not impact competition between market participants because it will affect all market participants equally.

<sup>3</sup> The Exchange plans to implement the proposed rule change on a date that will be circulated in a notice from the CboeTrade Desk.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> *Id.*

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.



*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>10</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>11</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2023-010 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2023-010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2023-010 and should be submitted on or before March 15, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-03579 Filed 2-21-23; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-96936; File No. SR-NSCC-2023-002]

**Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Implementation Date of Revisions Relating to Excess Capital Premium Charge**

February 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 9, 2023, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(4) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change**

The proposed rule change consists of amendments to the NSCC Rules & Procedures ("Rules")<sup>5</sup> in order to state that the changes to the Rules that were proposed pursuant to File Number SR-NSCC-2022-005 ("Rule Filing"), as amended, and were approved by the Commission on February 1, 2023 ("Approved Rule Changes") will be implemented by March 13, 2023, as described in greater detail below.

**II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B,

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4).

<sup>5</sup> Capitalized terms not defined herein are defined in the Rules, available at [http://dtcc.com/~media/Files/Downloads/legal/rules/nsccl\\_rules.pdf](http://dtcc.com/~media/Files/Downloads/legal/rules/nsccl_rules.pdf).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>12</sup> 17 CFR 200.30-3(a)(12).



and C below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On May 20, 2022, NSCC filed the Rule Filing with the Commission pursuant to Section 19(b)(1) of the Act<sup>6</sup> and Rule 19b-4 thereunder.<sup>7</sup> NSCC filed amendments to the Rule Filing on June 1, 2022 ("Amendment No. 1"), July 6, 2022 ("Amendment No. 2"), and November 28, 2022 ("Amendment No. 3").

On February 1, 2023, the Commission approved the Rule Filing, as modified by Amendment Nos. 1, 2, and 3, pursuant to Section 19(b)(2) of the Act.<sup>8</sup> The Approved Rule Changes consist of modifications to the Rules to revise the Excess Capital Premium ("ECP") charge by enhancing the methodology for calculating the charge, and improve the transparency of the Rules regarding the ECP charge.<sup>9</sup>

NSCC is proposing to amend the Rules to add a legend to Rule 1 (Definitions and Descriptions), Procedure XV (Clearing Fund Formula and Other Matters) and Addendum B (Qualifications and Standards of Financial Responsibility, Operational Capability and Business History) of the Rules to state that the Approved Rule Changes will be implemented by March 13, 2023.<sup>10</sup> Upon implementation of the Approved Rule Changes, the legend will automatically be removed from these Rules.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>11</sup>

By establishing the date on which the Approved Rule Changes would be implemented, this proposal would enable Members to timely fulfill their obligations to NSCC, which would in turn support NSCC's ability to promote the prompt and accurate clearance and settlement of securities transactions. Therefore, NSCC believes that the proposal is consistent with Section 17A(b)(3)(F) of the Act.

*(B) Clearing Agency's Statement on Burden on Competition*

NSCC does not believe that the proposal to establish an implementation date of the Approved Rule Changes would have any impact, or impose any burden, on competition.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

NSCC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at <https://www.sec.gov/regulatory-actions/how-to-submit-comments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at [tradingandmarkets@sec.gov](mailto:tradingandmarkets@sec.gov) or 202-551-5777.

NSCC reserves the right to not respond to any comments received.

**III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>12</sup> of the Act and paragraph (f) of Rule 19b-4 thereunder.<sup>13</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NSCC-2023-002 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-NSCC-2023-002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NSCC-2023-002 and should be submitted on or before March 15, 2023.

<sup>6</sup> 15 U.S.C. 78s(b)(1).

<sup>7</sup> 17 CFR 240.19b-4.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> See Securities Exchange Act Release No. 96786 (February 1, 2023), 88 FR 8013 (February 7, 2023) (SR-NSCC-2022-005).

<sup>10</sup> *Supra* note 5.

<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-03583 Filed 2-21-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96939; File No. SR-NASDAQ-2023-002]

### Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules 5910 and 5920 To Remove Expired and Obsolete Provisions

February 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 6, 2023, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 5910 and 5920 to remove expired and obsolete provisions.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of the proposed rule change is to remove expired and obsolete provisions from Rule 5910 and Rule 5920.

Nasdaq recently adopted rule changes to modify entry and all-inclusive annual fees for certain companies, which became operative on January 1, 2023.

The purpose of the proposed rule change was to (i) replace the tiered entry fee structure with a flat fee of \$270,000 when a Company first lists a class of equity securities on the Nasdaq Global or Global Select Market; (ii) modify the Exchange’s all-inclusive annual listing fees for all domestic and foreign companies listing equity securities covered by Listing Rules 5910 and 5920 on the Nasdaq Global Select, Global and Capital Markets; (iii) replace the two-tier entry fee structure with a flat fee of \$80,000 when an Acquisition Company, as defined below, first lists a class of equity securities on Nasdaq; (iv) to adopt an all-inclusive annual listing fee structure specific to Acquisition Companies listing on the Nasdaq Capital Market; and (v) to replace the current three-tier all-inclusive annual listing fee structure for all Acquisition Companies with a two-tier structure.<sup>3</sup> As a result, Rule 5910(a)(1) and Rule 5920(a)(1) contain entry fee provisions that are no longer applicable because such provisions applied to companies that submitted an application and listed on Nasdaq prior to January 1, 2023. Similarly, the all-inclusive annual listing fee schedules in Rule 5910(b)(2)(A)–(D) and (F) and Rule 5920(b)(2)(A)–(D) and (F) contain provisions describing obsolete all-inclusive annual listing fees. Nasdaq proposes to remove these expired and obsolete provisions from Rules 5910 and 5920.

In addition, Nasdaq proposes to remove other expired provisions in Rules 5910(a)(11), 5920(a)(11) and 5920(a)(12). Nasdaq is also proposing other non-substantive clarifying and conforming adjustments, including renumbering revised rules as applicable.

Nasdaq believes that the proposed changes will clarify and enhance transparency of the rules.

##### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>5</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by clarifying the rule language, and enhancing transparency and readability of the rules without substantively changing these rules.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal does not make any substantive changes to the existing rules. The proposal merely removes expired and obsolete provisions of Rules 5910 and 5920, clarifies the rule language, and enhances transparency and readability of the rules without substantively changing these rules.

#### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 96532 (December 19, 2022), 87 FR 79028 (December 23, 2022) (SR-Nasdaq-2022-068).

it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2023-002 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-NASDAQ-2023-002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2023-002, and should be submitted on or before March 15, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-03577 Filed 2-21-23; 8:45 am]

BILLING CODE 8011-01-P

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96933; File No. SR-CboeBYX-2023-003]

#### **Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Applicable Exchange Rules, Usage of Data Feeds, To Disclose That the Exchange Will Utilize Direct Data Feeds From MEMX LLC**

February 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 9, 2023, Cboe BYX Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Cboe BYX Exchange, Inc. (the "Exchange" or "BYX") proposes to update Rule 11.26(a), Usage of Data feeds, to disclose that the Exchange will utilize direct data feeds from MEMX LLC ("MEMX") when performing: (i) order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes. The Exchange has designated the proposed rule change as noncontroversial and provided the Commission with notice required by Rule 19b-4(f)(6)(iii) under the Act. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/byx/](http://markets.cboe.com/us/equities/regulation/rule_filings/byx/)), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### *A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

###### **1. Purpose**

The Exchange proposes to update Exchange Rule 11.26(a)<sup>3</sup> regarding the public disclosure of the sources of data that the Exchange utilizes when performing: (i) order handling; (ii) order routing; (iii) order execution; and (iv) related compliance processes. The Exchange currently utilizes MEMX market data from the Consolidated Quotation system ("CQS")/UTP Quotation Data Feed ("UQDF") for these purposes on BYX. The Exchange intends to begin to utilize MEMX's direct feeds in place of market data from the CQS/UQDF. Accordingly, the Exchange seeks to amend Exchange Rule 11.26(a) to reflect that the Exchange will utilize MEMX's direct feeds in place of market data from the CQS/UQDF when performing order handling, order execution, routing, and related compliance processes for equity securities on BYX. Once the Exchange begins to utilize direct feeds from MEMX, the Exchange will begin to utilize the CQS/UQDF as a secondary source of data from MEMX on BYX.

###### **2. Statutory Basis**

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>4</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>5</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

<sup>3</sup> The Exchange plans to implement the proposed rule change on a date that will be circulated in a notice from the CboeTrade Desk.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that its proposal to update Exchange Rule 11.26(a) to include the MEMX direct feeds will ensure that the Rule correctly identifies and publicly states on a market-by-market basis all the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, routing, and execution of orders, and for performing the regulatory compliance checks related to each of those functions. The proposed rule change also removes impediments to and perfects the mechanisms of a free and open market to protect investors and the public interest because it provides additional specificity, clarity and transparency.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes the proposal will enhance competition by because including all of the exchanges enhances transparency and enables investors to better assess the quality of the Exchange's execution and routing services. The Exchange also believes the proposal will enhance competition because it will potentially enhance the performance of its order handling and execution of orders in equity securities by receiving market data directly from MEMX. Finally, the proposed rule change will not impact competition between market participants because it will affect all market participants equally.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6)(iii) thereunder.<sup>10</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>11</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>11</sup> 15 U.S.C. 78s(b)(2)(B).

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBYX-2023-003 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBYX-2023-003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBYX-2023-003 and should be submitted on or before March 15, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>6</sup> *Id.*

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96934; File No. SR-ICEEU-2023-005]

### Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments of the ICE Clear Europe Delivery Procedures

February 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 2, 2023, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II and III below, which Items have been prepared by primarily by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(4)(ii) thereunder,<sup>4</sup> such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) proposes to amend its Delivery Procedures (“Delivery Procedures” or “Procedures”) to add a new Part II thereto (“Part II”) to address new ICE Futures Europe Dutch TTF Natural Gas Futures (each a “Contracts” and together the “Contracts”), natural gas futures contracts that will be traded at ICE Futures Europe and cleared by ICE Clear Europe. The proposed updates would also make a conforming change elsewhere in the Delivery Procedures.<sup>5</sup>

#### II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

#### (A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

##### (a) Purpose Background

ICE Clear Europe is proposing to add a new Part II to the Delivery Procedures as well as a conforming change elsewhere in the Delivery Procedures. Part II would apply to the Contracts, which are to be traded on ICE Futures Europe and cleared at ICE Clear Europe.<sup>6</sup> The amended Delivery Procedures would provide the delivery specifications and processes related to delivery under the Contracts. The proposed Delivery Procedures are intended to become operative on February 20, 2023, subject to regulatory approval.

Delivery under the Contracts would be settled by the transfer of rights to natural gas at the TTF (a notional point within the Dutch natural gas Transmission System at which the balancing of the amounts of natural gas takes place) from a Transferor nominated by the Seller to the Clearing House and from the Clearing House to a Transferee nominated by the Buyer. The amendments would provide that the Clearing Members grant authority to ICE Clear Europe to make Trade Nominations on their behalf in connection with deliveries under Contracts. Clearing Members would not be required, and would not be able, to send Trade Nominations themselves.

The amendments would set out relevant definitions related to delivery under the contract, including those relating to TTF and the Transmission System. The amendments would further specify certain details of the delivery process for the Contracts including denominations of relevant quantity, settlement price, relevant time zones, timing of cessation of trading and certain requirements for exchange of futures for physical and swap transactions under exchange rules.

The amendments would also address the responsibilities of the Clearing House and relevant parties for delivery under Contracts, as well as certain limitations of liability for the Clearing House. Specifically, the Clearing House would not be responsible for the performance or non-performance of GTS (the transmission system operator), including of its obligations under the GTS Rules. Additionally, neither the Buyer, Seller nor their Transferees or Transferors would have any claim against the Clearing House for any loss, cost, damage or expense incurred or suffered as a result of the condition or operation of the Transmission System or any part thereof or the performance or non-performance of GTS except as otherwise expressly provided in the ICE Futures Europe Rules.

The amendments would provide details related to delivery contract security, which is the delivery margin to be provided by Buyer and Seller, and which would take into account the possibility of costs or charges arising from the balancing regime under the TSC. The Clearing House would be permitted to alter the calculation of each of the Buyer’s Security and the Seller’s Security at any time or make adjustments in respect of a specific Seller or Buyer.

The amendments would include delivery timetables with detailed timeframes and descriptions of the processes for delivery under Contracts, and such timetables would set out, among other processes, the time for cessation of trading, provision of Buyer’s and Seller’s Security, submission of delivery intentions, confirmation reports, notifications to the nomination agent, payment, top-up of security, invoicing, and other matters. The amendments would also include delivery tables with detailed times and processes relating to failed delivery under Contracts. In respect of invoicing, the amendments would detail how amounts included in invoices prepared by the Clearing House would be calculated for confirmed deliveries and failed deliveries of each Contract, and address the credit notes issued to Buyer’s in respect of failed deliveries.

In addition, the amendments would provide a summary of the reports produced by the Clearing House in respect of each Contract and made available to Buyers and Sellers electronically.

The amendments would also update Section 5.1 of the Delivery Procedures to include ICE Futures Europe Dutch TTF Natural Gas Futures Contract in the list of contracts under which, subject to delivery obligations, sellers and buyers

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4)(ii).

<sup>5</sup> Capitalized terms used but not defined herein have the meanings specified in the Delivery Procedures or, if not defined therein, the ICE Clear Europe Clearing Rules.

<sup>6</sup> ICE Clear Europe also currently clears a similar TTF natural gas futures contract traded on the ICE Endex market. That ICE Endex contract will continue to be cleared separately from, and will not be fungible with, the Contracts and is addressed by a separate existing part of the Delivery Procedures (although the Delivery Procedures for the two contracts are substantially similar).

can nominate transferors and transferees.

#### (b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Delivery Procedures are consistent with the requirements of Section 17A of the Act<sup>7</sup> and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act<sup>8</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed changes to the Delivery Procedures are designed to establish delivery procedures relating to ICE Futures Europe Dutch TTF Natural Gas Futures Contracts, which will be traded on ICE Futures Europe and cleared at ICE Clear Europe. The amendments would set out the role, responsibilities and liabilities of the Clearing House, Clearing Members and designated transferors and transferees in the physical delivery process, in line with Delivery Procedures for other types of deliverable energy futures contracts. Contracts providing for delivery under Part II will be cleared by the Clearing House in the substantially same manner as other types of deliverable energy futures contracts, and will be supported by ICE Clear Europe's existing F&O financial resources, risk management, systems and operational arrangements. Accordingly, ICE Clear Europe believes that its financial resources, risk management, systems and operational arrangements are sufficient to support clearing of such contracts and to manage the risks associated with such contracts. As a result, in ICE Clear Europe's view, the amendments would be consistent with the prompt and accurate clearance and settlement of the contracts, and the protection of investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Act.<sup>9</sup> (In ICE Clear Europe's view, the amendments would not affect the safeguarding of funds or securities in the custody or control of the clearing agency or for which it is responsible, within the meaning of Section 17A(b)(3)(F).<sup>10</sup>)

In addition, Rule 17Ad-22(e)(10)<sup>11</sup> provides that "[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable [. . .] establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor and manage the risks associated with such physical deliveries." As discussed above, the amendments would establish a new set of procedures applicable to the delivery and settlement of ICE Futures Europe Dutch TTF Natural Gas Futures Contracts. The procedures would address, among other matters, delivery specifications for such contracts, the obligations and roles of Clearing Members and the Clearing House, certain limitations of liability for the Clearing House, and certain other documentation and timing matters. Clearance of the Contracts would otherwise be supported by ICE Clear Europe's existing financial resources, risk management, systems and operational arrangements. The amendments thus appropriately clarify the role and responsibilities of the Clearing House and Clearing Members with respect to physical delivery. As a result, ICE Clear Europe believes the amendments are consistent with the requirements of Rule 17Ad-22(e)(10).<sup>12</sup>

#### (B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments to the Delivery Procedures are intended to establish a new set of procedures applicable to the delivery and settlement of ICE Futures Europe Dutch TTF Natural Gas Futures Contracts in connection with the listing of such contracts for trading on the ICE Futures Europe market. ICE Clear Europe believes that such contracts would provide additional opportunities for interested market participants to engage in trading activity in the relevant Dutch natural gas market. ICE Clear Europe does not believe the amendments would adversely affect competition among Clearing Members, materially affect the cost of clearing, adversely affect access to clearing for Clearing Members or their customers, or otherwise adversely affect competition

in clearing services. Accordingly, ICE Clear Europe does not believe that the amendments would impose any impact or burden on competition that is not appropriate in furtherance of the purpose of the Act.

#### (C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendment has not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and paragraph (f) of Rule 19b-4<sup>14</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, security-based swap submission or advance notice is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICEEU-2023-005 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-ICEEU-2023-005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

<sup>7</sup> 15 U.S.C. 78q-1.

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>11</sup> 17 CFR. 240.17Ad-22(e)(10).

<sup>12</sup> 17 CFR. 240.17Ad-22(e)(10).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f).

internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at <https://www.theice.com/clear-europe/regulation>. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2023-005 and should be submitted on or before March 15, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2023-03581 Filed 2-21-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96935; File No. SR-IEX-2023-02]

### Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Implementation Date of Recently-Approved Changes to IEX Rule 11.190(g) That Are Designed To Provide an Alternative Calculation for Pegged Order Types for Determining Whether a Quote Instability Condition Exists

February 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup>

notice is hereby given that on February 7, 2023, the Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,<sup>3</sup> and Rule 19b-4 thereunder,<sup>4</sup> IEX is filing with the Commission a proposal to extend the implementation date of recently-approved changes to IEX Rule 11.190(g) that are designed to provide an alternative calculation for pegged order types for determining whether a quote instability condition exists. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.<sup>5</sup>

The text of the proposed rule change is available at the Exchange's website at [www.iextrading.com](http://www.iextrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

IEX is filing this proposal to extend the implementation date of recently-approved changes to IEX Rule 11.190(g) that are designed to provide an alternative calculation for pegged order types for determining whether a quote instability condition exists ("original rule change"). IEX filed the proposed

original rule change on September 27, 2022,<sup>6</sup> and the Commission approved it on December 1, 2022.<sup>7</sup> The original rule change is currently scheduled to be implemented within 90 days of the Approval Order,<sup>8</sup> i.e., on or before March 1, 2023.

The Exchange had anticipated that the technical changes necessary to implement the original rule change would be completed in time to enable implementation on or before March 1, 2023. However, due to unforeseen delays, the technical changes are not yet complete, and IEX needs additional time to implement beyond the 90 days specified in the Original Filing. As a result, the Exchange is now proposing to implement the proposed changes by June 30, 2023, and will announce the implementation date by Trading Alert at least ten (10) days in advance of such implementation date. Besides the implementation date, the Exchange is not proposing to make any changes to the terms of the Original Filing.

###### 2. Statutory Basis

IEX believes that its proposal is consistent with the provisions of Section 6(b) of the Act<sup>9</sup> in general, and with Section 6(b)(5) of the Act,<sup>10</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the proposal is consistent with the Act because it will allow the Exchange to complete technical changes necessary to implement the original rule change in a thorough and risk averse manner, thereby protecting investors. Further, the ten (10) days' notice to market participants of the implementation date for the original rule filing is consistent with the Act because it will provide appropriate transparency to the Commission and market participants regarding the change. Finally, as noted in the Purpose section, the Exchange is not proposing to make any changes to the terms of the Original Filing other than the implementation date.

<sup>6</sup> See Securities Exchange Act Release No. 96014 (October 11, 2022), 87 FR 62903 (October 17, 2022) (SR-IEX-2022-06) ("Original Filing").

<sup>7</sup> See Securities Exchange Act Release No. 96416 (December 1, 2022), 87 FR 75099 (December 7, 2022) (SR-IEX-2022-06) ("Approval Order").

<sup>8</sup> See *supra* note 7.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(1).

<sup>4</sup> 17 CFR 240.19b-4.

<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).



### *B. Self-Regulatory Organization's Statement on Burden on Competition*

IEX does not believe that the proposal will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As explained above, the purpose of this proposal is to modify the timing of the planned implementation of recently-approved changes to IEX Rule 11.190(g) and to inform the Commission and market participants of that change. The currently functionality of IEX Rule 11.190(g) will continue to be available until the Original Filing is implemented, and the implementation delay will impact all market participants equally. The Exchange does not expect the implementation date change to place any burden on competition. Rather, postponing implementation will allow the Exchange to implement the original rule change in a thorough and risk averse manner and is not designed for any competitive purpose.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>15</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>16</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The Exchange states that waiving the operative delay will permit the Exchange to implement the proposal prior to expiration of the latest implementation date to the original rule change, which the Exchange states will avoid any potential confusion on the part of market participants or the Commission as to when the original rule change will be implemented. Based on the foregoing, the Commission believes that allowing this proposal to become operative upon filing is consistent with the protection of investors and the public interest. For this reason, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>17</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-IEX-2023-02 on the subject line.

<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-IEX-2023-02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-IEX-2023-02, and should be submitted on or before March 15, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-03582 Filed 2-21-23; 8:45 am]

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<sup>18</sup> 17 CFR 200.30-3(a)(12), (59).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96938; File No. SR-FICC-2023-002]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Consisting of Modifications to the FICC Government Securities Division Rulebook

February 15, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 6, 2023, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to the FICC Government Securities Division (“GSD”) Rulebook (“Rules”)<sup>5</sup> in order to improve the transparency of those rules by making clarifications, corrections, and technical changes to the Rules, as described in greater detail below.

#### II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### (A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

In Rule 3A, Sections 2(g) and 3(d), FICC proposes to clarify that Members should refer to the Fine Schedule for the dollar amount of the fine by deleting the references to \$1,000 and adding that the fine is pursuant to the applicable Fine Schedule in the Rules. The proposed rule changes would also remove the requirement that notifications under these Sections be provided orally, as such notifications are difficult to record and are redundant of the written notification also required in these Sections of Rule 3A.

FICC would also revise these sections to more clearly describe the Sponsoring Members’ obligations to notify FICC of certain events that involve either the Sponsoring Member or their Sponsored Members. Currently, Section 2(g) describes only the Sponsoring Members’ obligation to notify FICC when it is no longer in compliance with the relevant standards and qualification for a Sponsoring Member membership, and Section 3(d) describes an obligation of the Sponsored Members to notify their Sponsoring Member(s) if it is no longer in compliance with the applicable requirements of Rule 3A. Section 3(d) then describes the obligation of a Sponsoring Member to notify FICC after it receives such notification from a Sponsored Member.

First, the proposed changes would remove from the Rules the obligation of a Sponsored Member to notify the Sponsoring Member stated in Section 3(d) because this obligation is one that should be created and enforced between those two entities and not in the GSD Rules. Second, the proposed changes would move the obligation of a Sponsoring Member to notify FICC when a Sponsored Member is no longer in compliance with the applicable requirements of that Rule from Section 3(d) to Section 2(g), where the obligations of Sponsoring Members are stated. Third, the proposed rule changes would include the requirement that a Sponsoring Member also notify FICC at least 90 calendar days prior to the effective date of any Reportable Event, as such term is defined in Rule 1 of the GSD Rules, applicable to a Sponsored Member, unless the Sponsoring Member demonstrates that it could not have reasonably done so, in which case such notice shall be provided as soon as possible. This proposed change would clarify that the reporting obligations of Sponsoring Members with respect to their Sponsored Members are the same

reporting obligations applicable to other GSD Members.

Finally, the proposed changes would revise a statement in Section 3(d) of Rule 3A that currently states FICC shall cease to act for a Sponsored Member that no longer meets the requirements for such membership. The proposed change would revise this statement to replace “shall” with “may” and would clarify that FICC has the right, but not the obligation, to cease to act for a Sponsored Member in such circumstances. This proposed change would align Section 3(d) with Section 13 of Rule 3A, which provides that FICC may, based on its judgement that there is adequate cause to do so, suspend a Sponsored Member from any FICC services in the circumstances described in that Section.

FICC also proposes changes to Sections 2(i) and 3(e), which address the procedures for Sponsoring Members and Sponsored Members, respectively, to voluntarily terminate their membership with FICC. These Sections currently state that a Sponsoring Member Voluntary Termination Notice or a Sponsored Member Voluntary Termination Notice, as applicable and as defined in those Sections of Rule 3A, is not effective until it is accepted by FICC and that such acceptance is evidenced by a notice to all Members announcing the termination of that membership.

First, FICC is proposing to revise these Sections to make clear that its acceptance of a voluntary termination of a Sponsoring Member’s or Sponsored Member’s membership shall be evidenced by a notification from FICC to the firm terminating its membership and that the effective date of the membership termination will be set forth in that notice from FICC to the member.

Second, the proposed changes to these Sections will clarify that the notice to all members regarding the voluntary termination of a Sponsoring Member’s or Sponsored Member’s membership (i) is an Important Notice, which is a notice posted to FICC’s public website, and (ii) is only posted when a Sponsoring Member has terminated its status as a Sponsoring Member with respect to all Sponsored Members or when a Sponsored Member has terminated its relationship with all Sponsoring Members and, as such, has terminated its membership with FICC. More specifically, the proposed changes would clarify that an Important Notice is not posted if a Sponsored Member terminates its relationship with one, but not all, of its Sponsoring Members, for example, but only when a Sponsored

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> Capitalized terms used herein and not defined shall have the meaning assigned to such terms in the GSD Rules, available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

Member or a Sponsoring Member ceases to participate in the Sponsored Clearing service.

FICC also proposes to make a clarification to Rule 3A, Section 3(c). Rule 3A, Section 3(c) currently states that each Person to become a Sponsored Member that shall be an FFI Member must be FATCA Compliant. FICC proposes to enhance clarity by adding that each Person to become a Sponsored Member that shall be a FFI Member is subject to the requirements of Section 9(iii) of Rule 3. FICC does not believe that this proposed change would change the relationship between existing Sponsored Members that are FFI Members and FICC because the requirements of Section 9(iii) of Rule 3A are currently applicable to FFI Members, including Sponsored Members that are FFI Members. Therefore, the proposed change would not impose any new requirement to these firms but would simply clarify the Rules regarding current requirements.

FICC also proposes to revise Rule 3, Section 9(iii), which currently states that an FFI Member shall indemnify FICC for any loss, liability or expense sustained by FICC as a result of such FFI Member failing to be FATCA Compliant. FICC proposes to revise this provision to clarify that the indemnification currently provided by an FFI Member to FICC under this Rule also covers FICC's affiliates, and each of their respective shareholders, directors, officers, employees, agents and advisors (each, an "Indemnified Person"). FICC would also define "Indemnified Person" in Rule 1. The proposed change would also align the indemnifications provided by Sponsored Members that are FFI Members pursuant to Rule 3, Section 9(iii) with the indemnifications provided by these firms in the membership agreements that they execute and deliver to FICC in connection with onboarding.

Rule 3A, Section 2(a) states that a Netting Member that is a Tier One Netting Member, other than an Inter-Dealer Broker Netting Member or a Non-IDB Repo Broker with respect to its activity in its Segregated Repo Account, is eligible to apply to become a Category 2 Sponsoring Member. FICC proposes to replace this description of Tier One Netting Members that are not eligible to apply to become a Category 2 Sponsoring Member (*i.e.*, an Inter-Dealer Broker Netting Member, or a Non-IDB Repo Broker with respect to activity in its Segregated Repo Account) with the phrase "Repo Broker in its capacity as a broker." In Rule 1, Repo Broker is currently defined as (i) an Inter-Dealer Broker Netting Member, or (ii) Non-IDB

Repo Broker with respect to activity in its Segregated Repo Account. As such, FICC believes it would enhance clarity to use the defined term "Repo Broker" with the additional detail that it is the Repo Broker in its capacity as a broker when describing Tier One Netting Members that are not eligible to apply to become Category 2 Sponsoring Members.

FICC is also proposing to revise Section 10 of Rule 3A to clarify the circumstances in which FICC may treat a Sponsoring Member's Netting System accounts and Omnibus Account as a single account. This Section 10 currently provides that a Sponsoring Member's Netting System accounts and its Sponsoring Member Omnibus Account shall be treated separately, as if they were accounts of separate entities, for purposes of satisfying Clearing Fund requirements for both its Netting Member activity and its Sponsoring Member activity. The rest of Section 10, however, describes FICC's right to treat these accounts as a single account in its sole discretion and without notice to a Sponsoring Member. FICC has not, and does not intend to, treat any Sponsoring Member's Netting System accounts and Sponsoring Member Omnibus Account as a single account for purposes of calculating its Clearing Fund requirements to FICC. Therefore, the proposed rule change would remove these statements from Section 10 of Rule 3A. The proposed rule changes would include a statement regarding FICC's right to apply a Sponsoring Member's Clearing Fund deposits to any obligations of that Sponsoring Member, as provided for under the GSD Rules. This proposed change would clarify that the statements in this Section 10 of Rule 3A do not have any impact on other rights FICC may have with respect to the application of a Member's Clearing Fund deposits, for example, following the default of that firm and as provided for under Sections 5 and 6 of Rule 4.

Finally, as described in greater detail below, FICC is also proposing changes to Section 12(a) of Rule 3A and the definition of Off-the-Market Transaction in Rule 1 to clarify the treatment of Sponsored Member Trades that are Off-the-Market Transactions.

By way of background, in 2019, FICC explained in a proposed rule change filing<sup>6</sup> that, in light of the intermediary relationship between a Sponsoring Member and its Sponsored Member, a

Sponsoring Member may choose to post to its Sponsored Member a haircut in order to address regulatory and/or investment guideline concerns. Specifically, the regulations and/or investment guidelines applicable to a Sponsored Member may require that it receive Eligible Securities worth more than the cash it is due to receive at final settlement of a FICC-cleared reverse repo, for example, in the form of a haircut. Similarly, in some circumstances, a Sponsoring Member may choose to collect such haircut from its Sponsored Member at the Start Leg to mitigate its exposure under the Sponsoring Member Guaranty. In both situations, FICC's understanding is that accounting considerations may favor those postings being facilitated through FICC's systems. Specifically, in light of the fact that the counterparty on a FICC-cleared trade changes after novation (and the Sponsoring Member and Sponsored Member thereafter both face FICC as principal), having an obligation to receive and/or deliver a haircut at final settlement directly to FICC as the post-novation counterparty may be favorable for the Sponsoring Member and the Sponsored Member from an accounting perspective. Following regulatory approval of the Sponsored Close-Out Clarification Filing, FICC added the new defined term "Initial Haircut" to the Rules to refer to this haircut.<sup>7</sup>

In addition, the Sponsored Close-Out Clarification Filing made clear that FICC is not under any obligation to verify the parties' agreement in respect of an Initial Haircut, and the parties' calculation of any Initial Haircut will be conclusive and binding on the parties.<sup>8</sup> These statements were consistent with the long-standing view that Initial Haircuts be treated as "off market" under the Rules. For example, when the Sponsored Membership Program was first proposed, FICC stated that it learned that custodial banks that are likely to be interested in becoming Sponsoring Members generally collateralize their custody clients (*i.e.*, the potential Sponsored Members) at 102 percent for U.S. Treasury repurchase agreements.<sup>9</sup> In the

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 11404 ("FICC would also amend Section 9(a) of Rule 3A to make clear that any Initial Haircut would be as agreed between the parties to the Sponsored Member Trade, and that FICC would not be under any obligation to verify the parties' agreement with respect to any Initial Haircut, and its calculation of the Initial Haircut would be conclusive and binding on the parties").

<sup>9</sup> Securities Exchange Act Release No. 51659 (May 5, 2005), 70 FR 25129 (May 12, 2005) (SR-FICC-2004-22) ("Sponsored Service Filing").

<sup>6</sup> Securities Exchange Act Release No. 88262 (February 21, 2020), 85 FR 11401 (February 27, 2020) (SR-FICC-2019-007) ("Sponsored Close-Out Clarification Filing").

Sponsored Service Filing, FICC also stated that under the GSD Clearing Fund formula at the time, this collateralization would cause a Sponsoring Member to pay an additional 4 percent of its overall transactional volume with Sponsored Members in the form of Clearing Fund margin. Therefore, FICC amended the Clearing Fund rule to avoid the potential adverse impact on a Sponsoring Member given that these additional funds payments are pass-through amounts and do not represent risk to FICC or its members.<sup>10</sup>

FICC is now proposing to clarify Section 12(a) of Rule 3A to clarify the Rules regarding how Initial Haircuts are treated in loss allocation arising from a default of a Sponsoring Member and would propose to amend the definition of Off-the-Market Transaction in Rule 1 to state that an Off-the-Market Transaction includes a Sponsored Member Trade in which the Sponsored Member provided the Initial Haircut.

More specifically, the proposed changes would clarify that, in the event a Sponsoring Member defaults, and a Sponsored Member has a Receive Obligation regarding a Sponsored Member Trade for which that Sponsored Member gave an Initial Haircut (which, pursuant to the Rules, makes that Sponsored Member Trade an Off-the-Market Transaction), the Sponsored Member would bear the risk of loss on such Sponsored Member Trade. This clarification would make this provision of the Rules consistent with FICC's practice to facilitate Initial Haircuts as payments but are not otherwise part of FICC's risk management processes. The proposed rule change would add clarifying language to this effect in Section 12(a) of Rule 3A. Specifically, FICC would add that, except as expressly set forth in Section 12 of Rule 3A, if a loss or liability of FICC is determined to arise in connection with the close-out or liquidation of a Sponsored Member Trade of a Sponsored Member that is an Off-the-Market Transaction because the Sponsored Member has provided an Initial Haircut, FICC would allocate such loss or liability attributable to the Initial Haircut to such Sponsored Member in accordance with Section 7 of Rule 4. Currently, Section 7 of Rule 4 states that, to the extent that a loss or liability of FICC is determined by FICC to arise in connection with the close-out or liquidation of an Off-the-Market Transaction in the portfolio of a Defaulting Member, it shall be allocated directly and entirely to the Member that

was the counterparty to such Off-the-Market Transaction.

Furthermore, as noted above, FICC also proposes to add that an Off-the-Market Transaction includes a Sponsored Member Trade in which the Sponsored Member provided the haircut in the definition of Off-the-Market Transaction in GSD Rule 1.

#### (ii) Corrections

FICC is also proposing to make a number of changes to the Rules, described below, that would correct errors in the Rules. First, FICC would make a grammatical correction in Rule 3A, Section 1 by revising "and to" to "nor."

Next, FICC is proposing to correct an error in Rule 3A, Section 6(b). Currently, Rule 3A, Section 6(b) states that the comparison of Sponsored Member Trades will be governed by Rule 5 and either: (i) Rule 6A or (ii) Sections 1, 2, 4, 6 through 10 and 13 of Rule 6C depending upon the type of comparison for which the Sponsored Member Trades are submitted. FICC would add a reference to Rule 6B as new subsection (ii) to the list of Rules that govern the comparison of Sponsored Member Trades; Rule 6B describes Demand Comparison and is applicable for Sponsored Member Trades that are between a Sponsored Member and a Netting Member.<sup>11</sup> Rule 6B, Section 1 states that in order for FICC to process a trade for Demand Comparison, FICC must receive trade data from a Demand Trade Source. Rule 6B, Section 1 also states that FICC has designated the Repo Brokers as Demand Trade Sources with respect to Brokered Repo Transactions (other than GCF Repo Transactions) that are submitted to FICC by the deadline established for this purpose in the Schedule of Timeframes. Therefore, Rule 6B should have been included in Rule 3A, Section 6(b) when the Sponsored Member Trade definition was expanded in 2019 to allow Sponsored Members to submit FICC eligible securities transactions with Netting Members other than their Sponsoring Members.<sup>12</sup> The proposed change would correct this error that

failed to include Rule 6B in Rule 3A, Section 6(b).

FICC is also proposing to correct an error in Rule 3A, Section 8(iii) by changing the reference from section (a)(ii) of the definition of Sponsored Member Trade to section (a) of the definition of Sponsored Member Trade. Rule 3A, Section 8(iii) currently states that with respect to Section 1 of Rule 12, the optional Pair-Off Service is available to Sponsored Member Trades within the meaning of section (a)(ii) of that definition. Section (a)(ii) of the definition of Sponsored Member Trades means a transaction that satisfies the requirements of Section 5 of Rule 3A and that is between a Sponsored Member and a Netting Member. Section (a)(i) of the definition of Sponsored Member Trade means a transaction that satisfies the requirements of Section 5 of Rule 3A and that is between a Sponsored Member and its Sponsoring Member. The Pair-Off Service is currently available to transactions that fall within the meaning of section (a)(ii) of the definition of Sponsored Member Trades as well as transactions that fall within the meaning of section (a)(i) of the definition of Sponsored Member Trades. Therefore, FICC proposes to correct the current reference from section (a)(ii) to section (a) of the definition of Sponsored Member Trade in Rule 3A, Section 8(iii) to clarify that the optional Pair-Off Service is available to Sponsored Member Trades that fall within the meaning of sections (a)(i) and (a)(ii) of the definition of Sponsored Member Trade.

FICC is proposing to delete the first sentence in Rule 3A, Section 12(c), which states that the entire amount of the Required Fund Deposit associated with the Sponsoring Member's Netting System accounts and the entire amount of the Sponsoring Member's Omnibus Account Required Fund Deposit may be used to satisfy any amount allocated against a Sponsoring Member in its capacity as either a Netting Member or a Sponsoring Member. The proposed change would remove this statement, which does not describe the current process and should have been removed when FICC revised the loss allocation rules to, among other things, incorporate the concept of the Loss Allocation Cap and to reference the applicable sections in Rule 4 that would apply when a Sponsoring Member elects to terminate its status as a Sponsoring Member.<sup>13</sup> The proposed change would correct the

<sup>11</sup> The term "Sponsored Member Trade" means (a) a transaction that satisfies the requirements of Section 5 of Rule 3A and that is (i) between a Sponsored Member and its Sponsoring Member or (ii) between a Sponsored Member and a Netting Member or (b) a Sponsored GC Trade. Rule 1, *supra* note 5.

<sup>12</sup> Securities Exchange Act Release No. 85470 (March 29, 2019), 84 FR 13328 (April 4, 2019) (SR-FICC-2018-013). As of February 11, 2019, the advance notice (SR-FICC-2018-802) was deemed to not have been objected to by the Commission.

<sup>13</sup> Securities Exchange Act Release Nos. 83970 (August 28, 2018), 83 FR 44929 (September 4, 2018) (SR-FICC-2017-022) and 83951 (August 27, 2018), 83 FR 44331 (August 30, 2018) (SR-FICC-2017-806) ("Loss Allocation Filing").

<sup>10</sup> *Id.*

error of failing to delete this sentence in the Loss Allocation Filing. The Loss Allocation Filing added the description of the current process in the second sentence of Rule 3A, Section 12(c), but should have also deleted the description of the process that was in the Rules at the time (*i.e.*, the first sentence of Rule 3A, Section 12(c)).<sup>14</sup>

The process is correctly described in the second sentence of Rule 3A, Section 12(c), which as described above, was added in the Loss Allocation Filing and intended to replace the process described in the first sentence of Rule 3A, Section 12(c). The second sentence of Rule 3A, Section 12(c) states that with respect to an obligation to make payment due to any loss allocation amounts assessed to a Sponsoring Member pursuant to Rule 3A, Section 12(b) above, the Sponsoring Member may instead elect to terminate its membership in FICC pursuant to Section 7b of Rule 4 and thereby benefit from its Loss Allocation Cap pursuant to Section 7 of Rule 4. In addition, for the purpose of determining the Loss Allocation Cap for such Sponsoring Member, its Required Fund Deposit will be the sum of its Required Fund Deposit and its Sponsoring Member's Omnibus Account Required Fund Deposit.<sup>15</sup>

Finally, FICC would correct the Interpretative Guidance with Respect to Settlement Finality by adding a section describing the point of finality for Sponsored GC Trades. Specifically, FICC proposes to add a section that would state that the point of finality of settlement of Sponsored GC Trades occurs on the books of the Sponsored GC Clearing Agent Bank at the point when the Sponsoring Member and Sponsored Member make the relevant payment obligation or securities delivery, as applicable, to the account at the Sponsored GC Clearing Agent Bank specified by the pre-novation counterparty in accordance with such procedures as the Sponsoring GC Clearing Agent Bank may specify from time to time. This proposed subsection describing the point of finality for Sponsored GC Trades should have been added to the Interpretative Guidance with Respect to Settlement Finality in the proposal to add the Sponsored GC Service but was inadvertently omitted; this proposal was approved in 2021.<sup>16</sup>

### (iii) Technical Changes

FICC is also proposing to make a number of technical changes to the Rules, which include correcting grammar, for example, by adding a comma after the word “hereinafter” in the second paragraph of Rule 3A, Section 2(i) and adding “hereinafter,” before the defined terms in Rule 3A, Sections 2(i), 3(e) and 18(b). The proposed changes would also add the word “the” before the defined term “Sponsored Member Voluntary Termination Notice” in Rule 3A, Section 3(e), and would revise the hyphens in the headings of Sections 3, 4, 5, 6, 8, 10, 12, 13, 14, 15 and 16 of Rule 3A to be consistent with the hyphens in the headings of the other sections in Rule 3A (*e.g.*, Sections 1 and 2).

In the Schedule of Sponsored GC Trade Timeframes, with respect to the “10:30 p.m. to 2:00 a.m.” timeframe, FICC proposes to delete the double space after the line that lists “10:30 p.m.” so that there would only be a single space between the line that lists “10:30 p.m.” and the line that lists “to 2:00 a.m.” FICC also proposes to bold the times listed in the Sponsored GC Trade Timeframes to be consistent with the formatting of times in the other schedules in the Rules.

In the Schedule of GC Comparable Securities, FICC proposes to delete the extra space after the hyphen in the description of GC Comparable Securities for Generic Security Type “FFARM” (Fannie Mae and Freddie Mac Fixed Rate and Adjustable Rate Mortgage-Backed Securities) and for Generic Security Type “TIPS” (U.S. Treasury inflation-protected notes and bonds). In the Schedule of GC Comparable Securities, FICC proposes to add the word “and” in the description of GC Comparable Securities for Generic Security Type “STRP” and to delete the comma and add the word “and” in the description of GC Comparable Securities for Generic Security Type “TIPS”.

In Rule 3A, Section 6(b), FICC proposes to add a new subsection (ii) as described above and as such, also proposes to make a conforming change to renumber current subsection (ii) to subsection (iii). Similarly, in the Interpretative Guidance with Respect to Settlement Finality, FICC proposes to add subsection 2(b), as further described above. As such, FICC proposes to make a conforming change to revise current subsection 2(b) to subsection 2(c).

### 2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be

designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>17</sup>

The proposed changes to make certain clarifications, corrections, and technical changes to the Rules would help to ensure that the Rules are accurate and clear to participants. When participants better understand their rights and obligations regarding the Rules, such participants are more likely to act in accordance with the Rules, which FICC believes would promote the prompt and accurate clearance and settlement of securities transactions. As such, FICC believes that the proposed changes would be consistent with Section 17A(b)(3)(F) of the Act.<sup>18</sup>

### (B) Clearing Agency's Statement on Burden on Competition

FICC does not believe the proposed rule changes to make certain clarifications, corrections, and technical changes to the Rules would impact competition. The proposed rule changes would help to ensure that the Rules remain clear and accurate. In addition, the changes would facilitate participants' understanding of the Rules and their obligations thereunder. These changes would not affect FICC's operations or the rights and obligations of the membership. As such, FICC believes the proposed rule changes would not have any impact on competition.

### (C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC reviewed the proposed rule change with Sponsoring Members, who are the FICC Members that would be impacted by the proposed changes. FICC has not received any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information. All prospective commenters should follow the Commission's instructions on

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Securities Exchange Act Release Nos. 92808 (August 30, 2021), 86 FR 49580 (September 3, 2021) (SR-FICC-2021-003) and 92799 (August 27, 2021), 86 FR 49387 (September 2, 2021) (SR-FICC-2021-801).

<sup>17</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>18</sup> *Id.*

how to submit comments, available at <https://www.sec.gov/regulatory-actions/how-to-submit-comments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at [tradingandmarkets@sec.gov](mailto:tradingandmarkets@sec.gov) or 202-551-5777.

FICC reserves the right to not respond to any comments received.

### III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and Rule 19b-4(f)(6) thereunder.<sup>20</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2023-002 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.
- All submissions should refer to File Number SR-FICC-2023-002. This file number should be included on the subject line if email is used. To help the Commission process and review your

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FICC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FICC-2023-002 and should be submitted on or before March 15, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2023-03576 Filed 2-21-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SURFACE TRANSPORTATION BOARD

[Docket No. MCF 21105]

### Avalon Motor Coaches, LLC— Acquisition of Control—Wynne Transportation, LLC

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice tentatively approving and authorizing finance transaction.

**SUMMARY:** On January 23, 2023, Avalon Motor Coaches, LLC (Avalon), an interstate passenger motor carrier, filed an application for Avalon to purchase and assume substantially all the shuttle services of another interstate passenger motor carrier, Wynne Transportation, LLC (Wynne). The Board is tentatively approving and authorizing this

transaction. If no opposing comments are timely filed, this notice will be the final Board action.

**DATES:** Comments must be filed by April 10, 2023. If any comments are filed, Avalon may file a reply by April 23, 2023. If no opposing comments are filed by April 10, 2023, this notice shall be effective on April 11, 2023.

**ADDRESSES:** Comments may be filed with the Board either via e-filing on the Board's website at [www.stb.gov/proceedings-actions/e-filing/other-filings/](http://www.stb.gov/proceedings-actions/e-filing/other-filings/) or in writing addressed to: Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001. Comments must reference Docket No. MCF 21105.<sup>1</sup> In addition, one copy of comments must be sent to Avalon's representative: Barry M. Weisz, Thompson Coburn LLP, 10100 Santa Monica Boulevard, Suite 500, Los Angeles, CA 90067.

**FOR FURTHER INFORMATION CONTACT:** Jonathon Binet at (202) 245-0368. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

**SUPPLEMENTARY INFORMATION:** According to the application, Avalon is a Texas company owned by Virgin-Fish, Inc. (Virgin-Fish), a privately held California company.<sup>2</sup> (Appl. 4.) Virgin-Fish also owns Avalon Transportation, LLC (Avalon Transportation), a California company and Avalon's sister company. (*Id.*) Avalon and Avalon Transportation both hold interstate authority to carry passengers.<sup>3</sup> (*Id.* at 2.) According to the application, Avalon and Avalon Transportation currently operate chauffeured service offices in California, New York, New Jersey, and Pennsylvania, and motor coach offices in California, Arizona, and Texas. (*Id.* at 4.) The application states that Avalon focuses on the Texas Motor Coach division and operates charter shuttle services in San Antonio, Texas; Beaumont, Texas; and Houston, Texas, while Avalon Transportation focuses on chauffeured services and the California

<sup>1</sup> Concurrent with its application, Avalon also filed, in Docket No. MCF 21105 TA, a request under 49 U.S.C. 14303(i) to operate the assets to be acquired on an interim basis pending approval of the acquisition. The Board granted that request in a decision served in that docket on January 30, 2023.

<sup>2</sup> More information about Avalon's corporate structure and ownership can be found in the application. (*See* Appl. 4-5.)

<sup>3</sup> Further information about Avalon and Avalon Transportation, including U.S. Department of Transportation (USDOT) numbers, motor carrier numbers, and USDOT safety fitness ratings, can be found in the application. (Appl. 2, 12.)

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> 17 CFR 200.30-3(a)(12).

Motor Coach division.<sup>4</sup> (*Id.* at 3–4, 9–10.) The application further states that Avalon Transportation provides additional services to its clients in over 550 locations through its affiliate program. (*Id.* at 4.)

The application explains that in this transaction, Avalon will purchase most of Wynne's assets via an asset purchase agreement and will assume substantially all of Wynne's outstanding contracts related to charter services. (Appl. 3.) According to the application, Wynne is a Texas charter bus operator headquartered in Irving, Texas, with a satellite office in Houston, Texas.<sup>5</sup> (*Id.* at 10.) The application states that Wynne provides transportation services to a variety of clients, including corporations, sports teams, and schools, as well as transportation for conventions and large events in the Dallas and Houston areas. (*Id.* at 6.) The application states that Wynne is owned by Wynne Transportation Holdings, LLC (Wynne Holdings).<sup>6</sup> (*Id.* at 5–6.) The application further states that Wynne Holdings also owns three crew change operations that hold interstate authority to carry passengers:<sup>7</sup>

- *Coastal Crew Change Company, LLC*, headquartered in Lake Charles, Louisiana, covers a geographical territory that includes Louisiana, Mississippi, Alabama, and Florida, and currently operates from Lake Charles, Louisiana, and Gray, Louisiana, (*id.* at 5);

- *WTH Commercial Services, LLC d/b/a Mountain Crew Change*, headquartered in Elko, Nevada, covers a geographical territory that includes Nevada, Idaho, Montana, Wyoming, and Colorado, and currently operates industrial shuttles within northern and central Utah, (*id.*); and

- *Southwest Crew Change Company, LLC*, headquartered in Dallas, Texas, covers a geographical territory that includes Texas, New Mexico, and Arizona, and currently also operates emergency services transportation in the state of Texas. (*Id.*)

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction that it finds consistent with

the public interest, taking into consideration at least (1) the effect of the proposed transaction on the adequacy of transportation to the public, (2) the total fixed charges resulting from the proposed transaction, and (3) the interest of affected carrier employees. Avalon has submitted information required by 49 CFR 1182.2, including information demonstrating that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b), *see* 49 CFR 1182.2(a)(7), and a jurisdictional statement under 49 U.S.C. 14303(g) that the aggregate gross operating revenues of the involved carriers exceeded \$2 million during the 12-month period immediately preceding the filing of the application, *see* 49 CFR 1182.2(a)(5). (*See* Appl. 6–11.)

Avalon asserts that the proposed transaction is not expected to have an adverse impact on the adequacy of transportation services available to the public. (Appl. 7–8.) Avalon states that Wynne, currently one of the top three charter service providers in the Dallas-Fort Worth area, may need to shut down some or all of its operations absent the proposed transaction. (*Id.* at 8.) Avalon explains that because Avalon will assume Wynne's existing charter service contracts, the proposed transaction will preserve the transportation options that Wynne currently provides. (*Id.* at 7–8.) Avalon states that it intends to improve the safety, comfort, and reliability of the existing transportation offerings by modernizing Wynne's fleet. (*Id.* at 8.) Avalon also states that the transaction will allow it to improve Wynne's operational efficiency and expand Wynne's existing service offerings by connecting Wynne's routes and resources to Avalon's. (*Id.* at 7.)

Avalon argues that the proposed transaction will not adversely affect competition within the charter bus markets where Avalon and Wynne presently operate. (*Id.* at 9–11.) Avalon explains that after the transaction, Avalon will operate Wynne's fleets in the Dallas and Houston markets. (*Id.* at 10–11.) Avalon states that Wynne and Avalon currently operate in different metropolitan areas, except for a small overlap in the Houston market, where Avalon currently operates two motor coaches and Wynne operates 10 motor coaches. (*Id.* at 9–10.) Avalon estimates that Wynne's current operations constitute only a small fraction of the market in each city where Wynne operates. (*Id.* at 10.) Avalon states that after this transaction, it does not intend to divert any services formerly provided by Wynne to the cities where Avalon currently operates or reduce Avalon's services in any of those cities. (*Id.*)

However, Avalon asserts that the transaction will allow Avalon to take advantage of previously unavailable economies of scale, allowing Avalon to offer a more diverse set of services and routes. (*Id.* at 11.) Avalon also believes that the transaction will have an overall positive effect on competition in the Dallas market because it will prevent Wynne from exiting that market. (*Id.*) Avalon argues that in the Houston market, the transaction's effect on competition will be minimal because Wynne and Avalon operate only a small number of motor coaches and face vigorous competition from several other charter services, as well as public transportation and private car transportation. (*Id.* at 10.)

Avalon concedes that this transaction may result in additional fixed costs in the form of increased interest charges but asserts that any such increase is not likely to impact the public. (*Id.* at 8.) Avalon states that additional fixed costs may result because its acquisition of Wynne will be financed by a combination of cash and term notes, and Avalon will also assume Wynne's existing debt as part of the transaction. (*Id.*) However, Avalon plans to refinance this debt to improve the terms of the loans. (*Id.*) Avalon further represents that the proposed transaction will not adversely impact the interests of Wynne's employees. (*Id.* at 8–9.) Avalon states that absent the proposed transaction, Wynne may need to reduce its workforce or shut down operations entirely. (*Id.* at 9.) Avalon claims that it is committed to maintaining Wynne's current workforce on the same terms and ultimately expects to increase Wynne's workforce as it expands Wynne's operations. (*Id.* at 8.) Avalon argues that because it intends to grow the business, it has every incentive both to retain Wynne's current employees and attract new ones. (*Id.* at 8–9.)

Based on Avalon's representations, the Board finds that the acquisition as proposed in the application is consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6. If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action in this proceeding.

This action is categorically excluded from environmental review under 49 CFR 1105.6(c).

<sup>4</sup> The application states that Avalon also currently operates shuttle services in other states, including California and Arizona. (*Id.* at 3.)

<sup>5</sup> Further information about Wynne, including its USDOT number, motor carrier number, and USDOT safety fitness rating, can be found in the application. (*Id.* at 2, 12.)

<sup>6</sup> More information about Wynne's corporate structure and ownership can be found in the application. (*See id.* at 5–6.)

<sup>7</sup> Further information about these motor carriers, including USDOT numbers, motor carrier numbers, and USDOT safety fitness ratings, can be found in the application. (*Id.* at 2, 12.)

Board decisions and notices are available at [www.stb.gov](http://www.stb.gov).

*It is ordered:*

1. The proposed transaction is approved and authorized, subject to the filing of opposing comments.

2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.

3. This notice will be effective April 11, 2023, unless opposing comments are filed by April 10, 2023. If any comments are filed, Avalon may file a reply by April 23, 2023.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue NW, Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590.

Decided: February 16, 2023.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

**Aretha Laws-Byrum,**  
Clearance Clerk.

[FR Doc. 2023-03666 Filed 2-21-23; 8:45 am]

BILLING CODE 4915-01-P

## SURFACE TRANSPORTATION BOARD

[Docket No. FD 36666]

### New Jersey Department of Environmental Protection—Acquisition Exemption—Norfolk Southern Railway Company

The New Jersey Department of Environmental Protection (NJDEP), a non-carrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire the right to reactivate rail service from Norfolk Southern Railway Company (NSR) on approximately 8.6 miles of rail-banked railroad line extending between milepost WD 2.9 in Jersey City, Hudson County, N.J., and milepost WD 11.5 in the Township of Montclair, Essex County, N.J. (the Line).

In *Norfolk Southern Railway—Abandonment Exemption—in Hudson & Essex Counties, N.J.*, AB 290 (Sub-No. 408X) (STB served Sept. 29, 2020), the Board authorized abandonment of the Line.<sup>1</sup> NJDEP states that the Line is

currently subject to interim trail use under a trail use agreement between NJDEP and NSR under the Trails Act. (Notice of Trail Use Agreement, Aug. 19, 2022, AB 290 (Sub-No. 408X).)

NJDEP states that NSR agreed to convey to NJDEP the property comprising the Line, including the rails, track materials, and bridges, as well as NSR's residual rights to terminate trail use and reactivate rail service. According to NJDEP, NSR does not wish to retain any residual rights related to the Line, and NJDEP is willing to acquire such residual rights. NJDEP states that it would obtain a contract operator to operate the Line if rail service were to be reactivated and acknowledges that any such operator would require operating authority from the Board.

NJDEP certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed \$5 million. NJDEP further certifies that the proposed transaction does not involve a provision or agreement that would limit future interchange with a third-party connecting carrier.

The transaction may be consummated on or after March 8, 2023, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than March 1, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36666, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on NJDEP's representative, Paul Stofa, State of New Jersey Department of Environmental Protection, 401 East State Street, Trenton, NJ 08625-0420.

According to NJDEP, this action is categorically excluded from

environmental reporting requirements under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at [www.stb.gov](http://www.stb.gov).

Decided: February 15, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

**Brendetta Jones,**  
Clearance Clerk.

[FR Doc. 2023-03634 Filed 2-21-23; 8:45 am]

BILLING CODE 4915-01-P

## SURFACE TRANSPORTATION BOARD

[Docket No. FD 36668]

### CWW LLC dba Columbia Rail—Lease and Operation Exemption—Port of Benton County, Wash.

CWW LLC dba Columbia Rail (CWW), a Class III rail carrier, has filed a verified notice of exemption pursuant to 49 CFR 1150.41 to lease and operate 10.89 miles of railroad line between milepost 18.84 at Richland Junction and milepost 29.73 at Richland, Wash. (the Line), owned by the Port of Benton County, Wash. (the Port).<sup>1</sup>

According to the verified notice, the Port acquired the Line from the U.S. Department of Energy in 1998. CWW states that the Line is also operated by BNSF Railway Company (BNSF) and Union Pacific Railroad Company (UP). The verified notice further states that the operating rights of Tri-City Railroad Company, LLC (Tri-City), which had also operated over the Line since 2002, were discontinued in 2019. *See Port of Benton County—Adverse Discontinuance of Rail Service—Tri-City Railroad*, AB 1270 (STB served Oct. 31, 2019).<sup>2</sup> According to the verified notice, the Port and CWW have entered into a non-exclusive lease agreement for CWW to operate on the Line.

CWW certifies that the transaction involves no provision or agreement that would limit interchange with a third party connecting carrier and that no interchange commitments are contemplated. CWW certifies that its projected annual revenues would not exceed \$5 million and will not result in

<sup>1</sup> CWW also will lease and operate various sidings and connected spur tracks, such that the rail property leased and operated will total approximately 16 track miles.

<sup>2</sup> CWW styled its verified notice as a change in operator exemption. However, the proposed transaction is more akin to a lease and operation exemption, because CWW is seeking authority to become an additional carrier on the Line but is not contemporaneously replacing another common carrier.

<sup>1</sup> In the same decision, the Board issued a notice of interim trail use or abandonment (NITU) to allow the Open Space Institute Land Trust, Inc. (OSI), as the proposed trail sponsor, to negotiate with NSR for interim trail use/rail banking of the Line's right-of-way under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The NITU later was

extended until September 29, 2022. *Norfolk S. Ry.—Aban. Exemption—in Hudson & Essex Cntys., N.J.*, AB 290 (Sub-No. 408X) (STB served Sept. 3, 2021). Thereafter, pursuant to a request from OSI, the Board issued a replacement NITU substituting NJDEP as the proposed trail sponsor. *Norfolk S. Ry.—Aban. Exemption—in Hudson & Essex Cntys., N.J.*, AB 290 (Sub-No. 408X) (STB served June 30, 2022).



the creation of a Class II or Class I rail carrier.

The transaction may be consummated on or after March 8, 2023, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than March 1, 2023 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36668, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423-0001. In addition, a copy of each pleading must be served on CWW's representative, James H. M. Savage, 22 Rockingham Court, Germantown, MD 20874.

According to CWW, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at [www.stb.gov](http://www.stb.gov).

Decided: February 16, 2023.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

**Jeffrey Herzig,**  
Clearance Clerk.

[FR Doc. 2023-03664 Filed 2-21-23; 8:45 am]

BILLING CODE 4915-01-P

## TENNESSEE VALLEY AUTHORITY

### Agency Information Collection Activities: Information Collection Renewal; Comment Request

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** 60-Day notice of submission of information collection renewal approval and request for comments.

**SUMMARY:** The proposed information collection renewal described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. The Tennessee Valley Authority is soliciting public comments on this proposed collection renewal.

**DATES:** Comments should be sent to the Public Information Collection Clearance Officer no later than April 24, 2023.

**ADDRESSES:** Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Public Information Collection Clearance Officer: Jennifer A. Wilds, Specialist, Records Compliance, Tennessee Valley Authority, 400 W Summit Hill Dr., CLK-320, Knoxville, Tennessee 37902-1401.

**FOR FURTHER INFORMATION CONTACT:** Jennifer A. Wilds, Telephone (865) 632-6580 or by email at [pra@tva.gov](mailto:pra@tva.gov).

**SUPPLEMENTARY INFORMATION:** *Type of Request:* Renewal with minor modification.

*Title of Information Collection:* Employment Application.

*OMB Control Number:* 3316-0063.

*Current Expiration Date:* 04-30-2023.

*Frequency of Use:* On occasion.

*Type of Affected Public:* Individuals.

*Small Businesses or Organizations*

*Affected:* No.

*Federal Budget Functional Category Code:* 455.

*Estimated Number of Annual Responses:* 14,475.

*Estimated Total Annual Burden Hours:* 3,185.

*Estimated Average Burden Hours per Response:* 0.2.

*Need for and Use of Information:* Applications for employment are needed to collect information on qualifications, suitability for employment, and eligibility for veteran's preference. The information is used to make comparative appraisals and to assist in selections. The affected public consists of individuals who apply for TVA employment.

**Rebecca L. Coffey,**

Agency Records Officer.

[FR Doc. 2023-03460 Filed 2-21-23; 8:45 am]

BILLING CODE 8120-08-P

## TENNESSEE VALLEY AUTHORITY

### Agency Information Collection Activities: Information Collection Reinstatement of a Previously Approved Information Collection; Comment Request

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** 60-Day notice of submission of information collection reinstatement approval and request for comments.

**SUMMARY:** The proposed information collection reinstatement of a previously approved, but expired, information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as

required by the Paperwork Reduction Act of 1995. The Tennessee Valley Authority is soliciting public comments on this proposed collection renewal.

**DATES:** Comments should be sent to the Public Information Collection Clearance Officer no later than April 24, 2023.

**ADDRESSES:** Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Public Information Collection Clearance Officer: Jennifer A. Wilds, Specialist, Records Compliance, Tennessee Valley Authority, 400 W Summit Hill Dr., CLK-320, Knoxville, Tennessee 37902-1401.

**FOR FURTHER INFORMATION CONTACT:** Jennifer A. Wilds, Telephone (865) 632-6580 or by email at [pra@tva.gov](mailto:pra@tva.gov).

**SUPPLEMENTARY INFORMATION:** *Type of Request:* Approval of Reinstatement without modification of a previously approved, but expired, information collection.

*Title of Information Collection:* Land Use Survey Questionnaire—Vicinity of Nuclear Power Plants.

*OMB Control Number:* 3316-0016.

*Current Expiration Date:* 01/30/2023.

*Frequency of Use:* Annually.

*Type of Affected Public:* Individuals or households, farms and business and other for-profit.

*Small Businesses or Organizations Affected:* Yes.

*Federal Budget Functional Category Code:* 455.

*Estimated Number of Annual Responses:* 150.

*Estimated Total Annual Burden Hours:* 75.

*Estimated Average Burden Hours per Response:* .5.

*Need for and Use of Information:* This survey is used to locate, for monitoring purposes, rural residents, home gardens, and milk animals within a five-mile radius of a nuclear power plant. The monitoring program is a mandatory requirement of the Nuclear Regulatory Commission set out in the technical specifications when the plants were licensed. The ICR previously approved by OMB expired on January 31, 2023.

**Rebecca L. Coffey,**  
Agency Records Officer.

[FR Doc. 2023-03463 Filed 2-21-23; 8:45 am]

BILLING CODE 8120-08-P



**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Notice of Release From Federal Grant Assurance Obligations and Land Exchange, Tucson International Airport, Tucson, Pima County, Arizona**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of request to release airport land.

**SUMMARY:** The Federal Aviation Administration (FAA) is considering a proposal and invites public comment on the application for release of approximately 158-acres more or less of property from federal Grant Assurance obligations and land exchange at Tucson International Airport, Tucson, Arizona. Tucson Airport Authority (TAA) is requesting a total release from federal obligations on approximately 158-acres more or less of TAA property, and to authorize a land exchange of approximately 61.4-acres more or less [and cash] between TAA and the United States Air Force (USAF). The release property is comprised of a portion of two parcels along the southern boundary of the abandoned Hughes Access Road, adjacent to the main airport airfield and campus.

**DATES:** Comments must be received on or before March 24, 2023.

**ADDRESSES:** Comments on the request may be mailed or delivered to the FAA at the following address: Mr. Mike N Williams, Manager, Phoenix Airports District Office, Federal Aviation Administration, 3800 N Central Ave, Suite 1025, 10th Floor, Phoenix, Arizona, 85012. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Ms. Danette Bewley, A.A.E., President and Chief Executive Officer, Tucson Airport Authority, 7250 S Tucson Boulevard, Suite 300, Tucson, AZ 85756.

**SUPPLEMENTARY INFORMATION:** The release property is 158-acres more or less is a portion of two combined parcels, Parcel 22 and Parcel 34. Parcel 22 was acquired from the State of Arizona with Airport Improvement Program (AIP) funding via Patent dated February 24, 2002. Parcel 34 was acquired from the State of Arizona with Passenger Facility Charge (PFC) funding via Patent dated June 6, 2002. The 158-acres more or less portion of subject land identified as Parcel G is not currently required for aeronautical purposes. TAA is intending to exchange Parcel G property and cash, with approximately 61.4-acres more or less of USAF property known as Parcel F.

The exchange is based on appraisals estimating fair market value of the affected parcels. TAA will acquire fee simple ownership of 61.4-acres more or less and easements restricting development on 182.6-acres more or less from USAF in exchange for USAF acquiring fee simple ownership of 158.0-acres more or less, use restriction easements on 107-acres more or less, access easement of three acres of TAA land and \$1,640,000 in financial compensation. TAA will also fund the demolition and replacement of several munitions storage bunkers located on USAF property. Such use of the land represents a compatible land use that will not interfere with the airport or its operation, thereby protecting the interests of civil aviation. The resulting actions would allow future airport development for TAA and will support the USAF through providing the required munitions safety separation distances.

In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the DOT Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

Issued in El Segundo, California, on February 15, 2023.

**Brian Q. Armstrong,**  
Manager, Safety and Standards Branch,  
Airports Division, Western-Pacific Region.  
[FR Doc. 2023–03620 Filed 2–21–23; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration**

[Docket No. FMCSA–2022–0172]

**Hours of Service: Exemption Application From Flat Top Transport, LLC**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation.

**ACTION:** Notice of final disposition; denial of application for exemption.

**SUMMARY:** FMCSA announces its decision to deny Flat Top Transport's request for an exemption from the hours-of-service (HOS) regulations. Flat Top Transport requested a four-month exemption for "immediate and emergency delivery of dry and bulk food grade products to locations that supply stores and distribution centers

nationally." FMCSA analyzed the application and public comments and determined that the exemption would not achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

**FOR FURTHER INFORMATION CONTACT:** Ms. Bernadette Walker, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; (202) 385–2415; or *Bernadette.Walker@dot.gov*. If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826.

**SUPPLEMENTARY INFORMATION:****I. Public Participation***Viewing Comments and Documents*

To view comments, go to [www.regulations.gov](http://www.regulations.gov), insert the docket number "FMCSA–2022–0172" in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, "View Related Comments."

To view documents mentioned in this notice as being available in the docket, go to [www.regulations.gov](http://www.regulations.gov), insert the docket number, "FMCSA–2022–0172" in the keyword box, click "Search," and chose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

**II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in

the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### III. Background

#### *Current Regulatory Requirements*

To reduce the possibility of driver fatigue, FMCSA's HOS regulations in 49 CFR part 395 limit the time drivers of commercial motor vehicles (CMVs) may drive. The HOS regulations in 49 CFR 395.3(a)(1) prohibit an individual from driving again after 11 hours driving or 14 hours on duty until they have been off duty for a minimum of 10 consecutive hours, or the equivalent of at least 10 consecutive hours off duty. Under 49 CFR 395.3(a)(2)—commonly referred to as the 14-hour “driving window”—a driver has 14 consecutive hours in which to drive up to 11 hours after being off duty for 10 or more consecutive hours. Section 395.3(b)(1) prohibits drivers for a motor carrier that does not operate CMVs every day of the week from driving a CMV after being on duty for 60 hours during any 7 consecutive days, and section 395.3(b)(2) prohibits drivers for a motor carrier that operates CMVs every day of the week from driving a CMV after being on duty for 70 hours in any 8 consecutive days.

#### *Applicant's Request*

Flat Top Transport seeks a four-month exemption from the HOS regulations in 49 CFR part 395. Flat Top Transport requests the exemption to provide “immediate and emergency delivery of dry and bulk food grade products to locations that supply stores and distribution centers nationally.” Flat Top states that “the products being delivered are under strict time constraints and the number of available trucks is limited. Due to railroads being limited and a truck driver shortage, the inflation rates of parts and services, the time constraints of hours of service are causing many food producing factors to shut down until the products arrive.”

Flat Top Transport describes itself as a small trucking company with between 9 and 10 drivers which delivers products such as food grade flour, corn meal, and salts used to produce cereals, baked goods, canned goods, and meat processing. In its application, Flat Top did not identify any alternative

compliance measures that it would undertake to achieve an equivalent level of safety as complying with the existing HOS regulations.

### IV. Public Comments

On September 1, 2022, FMCSA published notice of Flat Top Transport's application for exemption and requested public comment (86 FR 50426). The Agency received 11 comments. North American Millers' Association, Schell Transport, Michael Bechara, Dana Burchell, Rich Dickerson, and two anonymous commenters favored the exemption application. Schell Transport commented, “I am in favor of HOS relief to help with food supply chain issues.” Two commenters, Rimmel Transport, LLC and Tracy Hall, offered no position either for or against the request, submitting general comments instead. Rimmel Transport commented, “There needs to be exemption for all fleets operating under 30 trucks.” The Commercial Vehicle Safety Alliance (CVSA) and AWM Associates, LLC opposed the exemption. CVSA commented that “supply chain delays do not constitute an emergency situation that would necessitate temporary relief from hours-of-service regulations.”

### V. FMCSA Safety Analysis and Decision

FMCSA continues to monitor unique challenges motor carriers and drivers experience while transporting freight on our Nation's highways and works to ensure that safety is not compromised. Supply chain issues alone, however, do not provide a sufficient basis to exempt motor carriers transporting dry bulk food grade products from the HOS regulations. Under 49 CFR 381.310(c)(1), applicants are required to explain how they would achieve a level of safety that is equivalent to or greater than, the level of safety that would be obtained by complying with the regulations. Flat Top offered no basis on which FMCSA could conclude that granting an exemption from the HOS regulations would provide an equivalent level of safety.

For the above reasons, Flat Top Transport, LLC's exemption application is denied.

**Robin Hutchinson,**

*Administrator.*

[FR Doc. 2023–03564 Filed 2–21–23; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### Transfer of Federally Assisted Facility

**AGENCY:** Federal Transit Administration (FTA), United States Department of Transportation (USDOT).

**ACTION:** Notice of Intent (NOI) to transfer federally assisted land or facility.

**SUMMARY:** Federal public transportation law permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that Pace Suburban Bus (Pace) intends to transfer the land and building located at 9 Osgood Street, Joliet, Illinois (hereinafter “the Subject Property”) to Will County, Illinois (hereinafter “the County”).

**DATES:** *Effective Date:* Any Federal agency interested in acquiring the facility must notify the FTA Region V Office of its interest no later than March 24, 2023.

**ADDRESSES:** Interested parties should notify the FTA Region V Office by writing to Kelley Brookins, Regional Administrator, Federal Transit Administration, 200 West Adams Street, Suite 320, Chicago, IL 60606.

**FOR FURTHER INFORMATION CONTACT:** Aruj Chaudhry, Regional Counsel, (312) 353–3869.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Federal public transportation law provides guidance on the transfer of capital assets. 49 U.S.C. 5334(h)(1)(A). Specifically, if a recipient of FTA assistance decides an asset acquired at least in part with assistance under 49 U.S.C. Chapter 53 is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government. 49 U.S.C. 5334(h)(1)(A).

Pace Suburban Bus (Pace) intends to transfer the land and building located at 9 Osgood Street, Joliet, Illinois (hereinafter “the Subject Property”) to Will County, Illinois (hereinafter “the County”). Pace used the Subject Property as a combined bus, administrative, and maintenance facility

from 1983 to the present (39 years). Pace is relocating to another facility and has determined it no longer needs the Subject Property for public transportation purposes. The County plans to utilize the Subject Property for the County Sheriff's SWAT unit's administrative and training functions.

#### Determinations

The FTA Administrator may authorize a transfer for a public purpose other than mass transportation only if the FTA Administrator decides:

(A) The asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) There is no purpose eligible for assistance under Chapter 53 of title 49, United States Code, for which the asset should be used;

(C) The overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) Through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

#### Federal Interest in Acquiring Land or Facility

This Notice implements the requirements of 49 U.S.C. 5334(h)(1)(A)(iv). Accordingly, FTA hereby provides notice of the availability of the Subject Property further described below. Any Federal agency interested in acquiring the Subject Property should promptly notify the FTA. If no Federal agency is interested in acquiring the Subject Property, FTA will make certain that the other requirements specified in 49 U.S.C. 5334(h)(1)(A)(i) through (iv) are met before permitting the asset to be transferred.

#### Additional Description of Land or Facility

The Subject Property is recognized with the Parcel Identification Numbers 30-07-15-118-001-0000, 30-07-15-108-020-0000, and 30-07-15-107-045-0000. The Subject Property is 2.2 acres, separated by a roadway. It includes a precast concrete, steel, and masonry structure that is 66,077 square feet, with 58,296 square feet on the ground level and 7,781 square feet on the mezzanine level. The structure comprises a masonry bearing wall building with barrel roof, wood rafters, and steel bow-string roof trusses constructed in 1926. In 1985, a bus garage addition was constructed with a structural steel frame, precast concrete wall panels, and a low slope roof. The building condition was recently assessed as adequate and was in use as a combined bus, administrative, and maintenance facility. Public utilities include gas, electric, and water.

*Authority:* 49 U.S.C. 5334(h)(1)(A), 49 CFR 1.91.

**Kelley Brookins,**

*Regional Administrator, TRO-5.*

[FR Doc. 2023-03602 Filed 2-21-23; 8:45 am]

**BILLING CODE 4910-57-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Notice of Meeting; The Electronic Tax Administration Advisory Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** The Electronic Tax Administration Advisory Committee (ETAAC) will hold a public meeting via

telephone conference line on Wednesday, Mar. 22, 2023.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alec Johnston, Office of National Public Liaison, at (202) 317-4299, or send an email to [publicliaison@irs.gov](mailto:publicliaison@irs.gov).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 5 U.S.C. 10(a)(2) of the Federal Advisory Committee Act, that a public meeting via conference call of the ETAAC will be held on Wednesday, Mar. 22, 2023, from 12:30 p.m. to 1:00 p.m. EDT. The purpose of the ETAAC is to provide continuing advice regarding the development and implementation of the IRS organizational strategy for electronic tax administration. ETAAC is an organized public forum for discussion of electronic tax administration issues such as prevention of identity theft and refund fraud. It supports the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members convey the public's perceptions of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements. Please call or email Alec Johnston to confirm your attendance. Mr. Johnston can be reached at 202-317-4299 or [PublicLiaison@irs.gov](mailto:PublicLiaison@irs.gov). Should you wish the ETAAC to consider a written statement, please call 202-317-4299 or email: [PublicLiaison@irs.gov](mailto:PublicLiaison@irs.gov).

Dated: February 15, 2023.

**John A. Lipold,**

*Designated Federal Official, Office of National Public Liaison, Internal Revenue Service.*

[FR Doc. 2023-03594 Filed 2-21-23; 8:45 am]

**BILLING CODE 4830-01-P**



# FEDERAL REGISTER

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## Part II

### Regulatory Information Service Center

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

## 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](http://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](http://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](mailto: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](http://www.reginfo.gov). The online Unified Agenda offers flexible search tools and access to the historic Unified Agenda database to 1995. The complete online edition of the Unified Agenda includes regulatory agendas from 65 Federal agencies. Agencies of the United States Congress are not included.

The Fall 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](http://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](http://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](http://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](http://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–A184	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 ( <b>Reg Plan Seq No. 17</b> ).	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 Non-immigrant 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.
Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
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 for Americans:* 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 longstanding 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](http://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](mailto: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

Action	Date	FR Cite
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

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RIN: 0583–AD78

BILLING CODE 3410–90–P

## DEPARTMENT OF COMMERCE

### Statement of Regulatory and Deregulatory Priorities

Established in 1903, the Department of Commerce (Commerce or Department) is one of the oldest Cabinet-level agencies in the Federal Government. Commerce's mission is to create the conditions for economic growth and opportunity across all American communities by promoting innovation, entrepreneurship, competitiveness, and environmental stewardship. Commerce has 12 operating units, which manage a diverse portfolio of programs and services ranging from trade promotion and economic development assistance to improved broadband access and the National Weather Service, and from standards development and statistical data production, including the decennial census, to patents and fisheries management. Across these varied activities, the Department seeks to provide a foundation for a more equitable, resilient, and globally competitive economy.

To fulfill its mission, Commerce works in partnership with businesses, educational institutions, community organizations, government agencies, and individuals to:

- Innovate by creating new ideas through cutting-edge science and technology, from advances in nanotechnology to ocean exploration to broadband deployment, and by protecting American innovations through the patent and trademark system;
- Support entrepreneurship and commercialization by enabling community development and strengthening minority businesses and small manufacturers;
- Maintain U.S. economic competitiveness in the global marketplace by promoting exports and foreign direct investment, ensuring a level playing field for U.S. businesses, and ensuring that technology transfer is consistent with our nation's economic and security interests;
- Provide effective management and stewardship of our nation's resources and assets to ensure sustainable economic opportunities; and
- Make informed policy decisions and enable better understanding of the

economy and our communities by providing timely, accessible, and accurate economic and demographic data.

### Responding to the Administration's Regulatory Philosophy and Principles

Commerce's Regulatory Plan tracks the most important regulations that the Department anticipates issuing to implement these policy and program priorities and foster sustainable and equitable growth. Of Commerce's 12 primary operating units, three bureaus—the National Oceanic and Atmospheric Administration (NOAA), the United States Patent and Trademark Office (USPTO), and the Bureau of Industry and Security (BIS)—issue the vast majority of the Department's regulations, and these three bureaus account for all the planned actions that are considered the Department's most important significant pre-regulatory or regulatory actions for FY 2022.

### National Oceanic and Atmospheric Administration

NOAA's mission is built on three pillars: science, service, and stewardship—to understand and predict changes in climate, weather, oceans, and coasts; to share that knowledge and information with others; and to conserve and manage coastal and marine ecosystems and resources.

At its core, NOAA is a scientific agency. It observes, measures, monitors, and collects data from the depths of the ocean to the surface of the sun, and it does so following principles of scientific integrity. These data are turned into weather and climate models and forecasts that are then used for everything from local weather forecasts to predicting the movement of wildfire smoke to identifying the impacts of climate change on fisheries and living marine resources.

With respect to service, NOAA not only collects data but is mandated to make it operational, and NOAA seeks to be the authoritative provider of climate products and services. By providing Federal, State, and local government partners, the private sector, and the public with actionable environmental information, NOAA can facilitate decisions in the face of climate change. Such decisions can range from businesses planning the location of offices; insurance companies trying to incorporate climate risk into their insurance policies; and municipalities looking to ensure that plans for construction of new housing developments will be resilient to increasing sea level risk, flooding, and heavy precipitation.

The final pillar of NOAA's mission is stewardship. NOAA seeks to conserve our lands, waters, and natural resources, protecting people and the environment now and for future generations. As part of Commerce, moreover, NOAA recognizes that economic growth must go hand-in-hand with environmental stewardship. For example, with respect to the nation's fisheries, NOAA looks simultaneously to optimize productivity and ensure sustainability in order to boost long-term economic growth and competitiveness in this vital sector of the U.S. economy. Similarly, national marine sanctuaries both protect important natural resources and also are significant drivers of eco-tourism and local recreation.

Within NOAA, the National Marine Fisheries Services (NMFS) and the National Ocean Service (NOS) are the components that most often exercise regulatory authority to implement NOAA's mission. NMFS oversees the management and conservation of the nation's marine fisheries; protects marine mammals and Endangered Species Act (ESA)-listed marine and anadromous species; and promotes economic development of the U.S. fishing industry. NOS assists the coastal states in their management of land and ocean resources in their coastal zones, including estuarine research reserves; manages national marine sanctuaries; monitors marine pollution; and directs the national program for deep-seabed minerals and ocean thermal energy.

Much of NOAA's rulemaking is conducted pursuant to the following key statutes:

#### *Magnuson-Stevens Fishery Conservation and Management Act*

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) rulemakings concern the conservation and management of fishery resources in the U.S. Exclusive Economic Zone (generally 3–200 nautical miles from shore). As itemized in the Unified Agenda, NOAA plans to take several hundred actions in FY 2022 under Magnuson-Stevens Act authority, of which roughly 20 are expected to be significant rulemakings, as defined in Executive Order 12866. With certain exceptions, rulemakings under Magnuson-Stevens are usually initiated by the actions of eight regional Fishery Management Councils (FMCs or Councils). These Councils are comprised of representatives from the commercial and recreational fishing sectors, environmental groups, academia, and Federal and State government, and they are responsible

for preparing fishery management plans (FMPs) and FMP amendments, and for recommending implementing regulations for each managed fishery. FMPs address a variety of issues, including maximizing fishing opportunities on healthy stocks, rebuilding overfished stocks, and addressing gear conflicts. After considering the FMCs' recommendations in light of the standards and requirements set forth in the Magnuson-Stevens Act and in other applicable laws, NOAA may issue regulations to implement the proposed FMPs and FMP amendments.

#### *Marine Mammal Protection Act*

The Marine Mammal Protection Act of 1972 (MMPA) provides the authority for the conservation and management of marine mammals under U.S. jurisdiction. It expressly prohibits, with certain exceptions, the intentional take of marine mammals. The MMPA allows, upon request and subsequent authorization, the incidental take of marine mammals by U.S. citizens who engage in a specified activity (e.g., oil and gas development, pile driving) within a specified geographic region. NMFS authorizes incidental take under the MMPA if it finds that the taking would be of small numbers, have no more than a "negligible impact" on those marine mammal species or stock, and would not have an "unmitigable adverse impact" on the availability of the species or stock for "subsistence" uses. NMFS also initiates rulemakings under the MMPA to establish a management regime to reduce marine mammal mortalities and injuries as a result of interactions with fisheries. In addition, the MMPA allows NMFS to permit the take or import of wild animals for scientific research or public display or to enhance the survival of a species or stock.

#### *Endangered Species Act*

The Endangered Species Act of 1973 (ESA) provides for the conservation of species that are determined to be "endangered" or "threatened," and the conservation of the ecosystems on which these species depend. NMFS and the Department of Interior's Fish and Wildlife Service (FWS) jointly administer the provisions of the ESA: NMFS manages marine and several anadromous species, and FWS manages land and freshwater species. Together, NMFS and FWS work to protect critically imperiled species from extinction. NMFS rulemaking actions under the ESA are focused on determining whether any species under its responsibility is an endangered or

threatened species and whether those species must be added to the list of protected species. NMFS is also responsible for designating, reviewing and revising critical habitat for any listed species. In addition, as indicated in the list of highlighted actions below, NMFS and FWS may also issue rules clarifying how particular provisions of the ESA will be implemented.

#### *The National Marine Sanctuaries Act*

The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce to designate and protect as national marine sanctuaries areas of the marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities. The primary objective of the NMSA is to protect marine resources, such as coral reefs, sunken historical vessels, or unique habitats.

NOAA's Office of National Marine Sanctuaries (ONMS), within NOS, has the responsibility for management of national marine sanctuaries. ONMS regulations, issued pursuant to NMSA, prohibit specific kinds of activities, describe and define the boundaries of the designated national marine sanctuaries, and set up a system of permits to allow the conduct of certain types of activities that would otherwise not be allowed.

These regulations can, among other things, regulate and restrict activities that may injure natural resources, including all extractive and destructive activities, consistent with community-specific needs and NMSA's purpose to "facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas." In FY 2022, NOAA is expected to have at least three regulatory actions under NMSA.

#### *Coastal Zone Management Act*

The Coastal Zone Management Act (CZMA) was passed in 1972 to preserve, protect, and develop and, where possible, to restore and enhance the resources of the nation's coastal zone. The CZMA creates a voluntary state-federal partnership, where coastal states (States in, or bordering on, the Atlantic, Pacific or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes), may elect to develop comprehensive programs that meet federal approval standards. Currently, 34 of the 35 eligible entities are implementing a federally approved coastal management plan approved by the Secretary of Commerce.

### NOAA's Regulatory Plan Actions

Of the numerous regulatory actions that NOAA is planning for this year and that are included in the Unified Agenda, there are five, described below, that the Department considers to be of particular importance.

1. *Illegal, Unreported, and Unregulated Fishing; Fisheries Enforcement; High Seas Driftnet Fishing Moratorium Protection Act (0648–BG11)*: The United States is a signatory to the Port State Measures Agreement (PSMA). The agreement is aimed at combating illegal, unreported, and unregulated (IUU) fishing activities through increased port inspection of foreign fishing vessels and by preventing the products of illegal fishing from landing and entering into commerce. The High Seas Driftnet Fishing Moratorium Act (Fishing Moratorium Act) implemented provisions of the PSMA, and NOAA issued regulations under the Fishing Moratorium Act in 2011 and 2013. Since then, the provisions of the Fishing Moratorium Act have been amended by the Illegal, Unreported and Unregulated Fishing Enforcement Act of 2015 (Pub. L. 114–81) and the Ensuring Access to Pacific Fisheries Act (Pub. L. 114–327). This proposed rule would implement amendments made by these later two laws. NMFS will also propose changes to the definition of IUU fishing for the purposes of identifying and certifying nations.

2. *Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule (0648–BI88)*: Regulatory modifications are needed to further reduce the likelihood of mortalities and serious injuries to endangered North Atlantic right whales from vessel collisions, which are a primary cause of the species' decline and greatly contributing to the ongoing Unusual Mortality Event (2017–present). Following two decades of growth, the species has been in decline over the past decade with a population estimate of only 368 individuals as of 2019. Vessel strikes are one of the two primary causes of North Atlantic right whale mortality and serious injury across their range, and human-caused mortality to adult females in particular is limiting recovery of the species. Entanglement in fishing gear is the other primary cause of mortality and serious injury, which is being addressed by separate regulatory actions.

3. *Endangered and Threatened Wildlife and Plants; Revision of the Regulations for Listing Endangered and Threatened Species and Designation of Critical Habitat (0648–BJ44)*: This action

responds to section 2 of the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990) and the associated Fact Sheet (List of Agency Actions for Review). This is a joint rulemaking by NMFS and the FWS (the Services) to rescind the regulatory definition of the term “habitat.” This previously undefined term was defined by regulation for the first time in 2020 for the purpose of designating critical habitat under the ESA. Pursuant to Executive Order 13990, the Services also considered the alternatives of retaining the existing habitat definition or revising the habitat definition and will be considering any alternatives provided during the public comment period on the proposed rule.

4. *Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat (0648–BK47)*: This action responds to section 2 of the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990) and the associated Fact Sheet (List of Agency Actions for Review). This is a joint rulemaking by the Services to revise joint regulations issued in 2019 implementing section 4 of the ESA. Specifically addressed in this action are joint regulations that address the classification of species as threatened or endangered and the criteria and process for designating critical habitat for listed species. Pursuant to Executive Order 13990, the Services reviewed the specific regulatory provisions that had been revised in the 2019 final rule. Following a review of the 2019 rule, the Services are proposing to revise a portion of these regulations but are also soliciting public comments on all aspects of the 2019 rule before issuing a final rule.

5. *Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation (0648–BK48)*: This action responds to section 2 of the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990) and the associated Fact Sheet (List of Agency Actions for Review). This is a joint rulemaking by the Services to revise joint regulations implementing section 7 of the ESA, which requires Federal agencies to consult with the Services whenever any action the agency undertakes, funds, or authorizes may affect endangered or threatened species or their critical habitat, to ensure that the action does not jeopardize listed species or adversely modify critical habitat. In 2019, the

Services revised various aspects of the regulations governing the consultation process under ESA Section 7 including, significantly, how the Services define the “effects of the action,” which has importance for determining the scope of consultation. Pursuant to Executive Order 13990, the Services reviewed the specific regulatory provisions that had been revised in the 2019 final rule. Following this review of the 2019 rule, the Services are proposing to revise a portion of these regulations, including “effects of the action,” but are also soliciting public comments on all aspects of the 2019 rule before issuing a final rule. In addition to revising provisions from the 2019 rule, the Services are proposing to clarify the responsibilities of a Federal agency and the Services regarding the requirement to reinitiate consultation.

### The United States Patent and Trademark Office

The USPTO's mission is to foster innovation, competitiveness, and economic growth, domestically and abroad, by delivering high quality and timely examination of patent and trademark applications, guiding domestic and international intellectual property policy, and delivering intellectual property information and education worldwide.

#### Major Programs and Activities

The USPTO is responsible for granting U.S. patents and registering trademarks. This system of secured property rights, which has its foundation in Article I, Section 8, Clause 8, of the Constitution (providing that Congress shall have the power to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries”) has enabled American industry to flourish. New products have been invented, new uses for old ones discovered, and employment opportunities created for millions of Americans. The continued demand for patents and trademarks underscores the importance to the U.S. economy of effective mechanisms to protect new ideas and investments in innovation, as well as the ingenuity of American inventors and entrepreneurs.

In addition to granting patents and trademarks, the USPTO advises the President of the United States, the Secretary of Commerce, and U.S. government agencies on intellectual property (IP) policy, protection, and enforcement; and promotes strong and effective IP protection around the world. The USPTO furthers effective IP

protection for U.S. innovators and entrepreneurs worldwide by working with their 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](mailto: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	87 FR 56925
NPRM Comment Period Extension.	09/16/22	
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-B188

### 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 (NCTAPs). 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'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. 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 this 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 allowing 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	

Action	Date	FR Cite
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](mailto: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](mailto: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 Centretex 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](mailto: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](http://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](mailto: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 Rule-making.	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 Rule-making.	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 (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<sub>2</sub> 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 Rule-making (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](http://www.energy.gov/eere/femp/notices-and-rules).

**URL For Public Comments:**

[www.regulations.gov](http://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](mailto: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 Re-opened.	10/23/15	80 FR 64370
NODA Comment Period Re-opened 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 Re-opened.	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](http://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](http://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](mailto: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.

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*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 I 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 health 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. 1395jj; 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 health 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](mailto: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	85 FR 7874
Interim Final Rule	02/12/20	
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](mailto: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



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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.

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*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,

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*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	87 FR 42973
Supplemental NPRM.	07/19/22	
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-A149

## HHS—FDA

### 67. Tobacco Product Standard for Menthol in Cigarettes [0910-A160]

*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	
NPRM Comment Period End.	07/05/22	87 FR 36786
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.

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*RIN:* 0910-A160

## 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 marketing 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 increase 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 (CoPs/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 (TVPPRA), 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 TVPPRA'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 (TVPPA), 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](mailto: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 support 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](mailto: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](mailto: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](mailto: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](mailto: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.

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RIN: 0985-AA18

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## 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 on an insistence on the rule of law—and also on a belief that individual dignity, symbolized and made real by the opening words of the Constitution ("We the People"), the separation of powers, and the Bill of Rights (including the Due Process Clause), helps to define our mission.

Fulfilling that mission requires the dedication of more than 240,000 employees in jobs that range from aviation and border security to emergency response, from cybersecurity analyst to chemical facility inspector, from the economist seeking to identify the consequences of our actions to the scientist and policy analyst seeking to make the nation more resilient against flooding, drought, extreme heat, and wildfires. Our duties are wide-ranging, but our goal is clear: keep America safe.

There are six overarching homeland security missions that make up DHS's strategic plan: (1) Counter terrorism and homeland security threats; (2) secure U.S. borders and approaches; (3) secure cyberspace and critical infrastructure; (4) preserve and uphold the Nation's prosperity and economic security; (5) strengthen preparedness and resilience (including resilience from risks actually or potentially aggravated by climate change); and (6) champion the DHS workforce and strengthen the Department. See also 6 U.S.C. 111(b)(1) (identifying the primary mission of the Department).

In promoting these goals, we attempt to evaluate our practices by reference to evidence and data, and to improve them in real time. We also attempt to deliver our multiple services in a way that, at once, protects the American people and does not impose excessive or unjustified barriers and burdens on those who use them.

In achieving those goals, we are committed to public participation and to listening carefully to the American people (and to noncitizens as well). We are continually strengthening our partnerships with communities, first responders, law enforcement, and Government agencies—at the Federal, State, local, tribal, and international levels. We are accelerating the deployment of science, technology, and innovation in order to make America more secure against risks old and new—and to perform our services better. We are becoming leaner, smarter, and more efficient, ensuring that every security resource is used as effectively as possible. We are reducing administrative burdens and simplifying our processes. For a further discussion of our mission, see the DHS website at <https://www.dhs.gov/mission>.

The regulations we have summarized below in the Department's Fall 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](http://www.regulations.gov).

*URL For Public Comments:*

[www.regulations.gov](http://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

Action	Date	FR Cite
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](http://www.regulations.gov).

*URL For Public Comments:*

[www.regulations.gov](http://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](mailto: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 of 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.

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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,

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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.

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*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.

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*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 Re-opened.	05/18/18	83 FR 23238
IFR; Comment Period Re-opened End.	06/18/18	
Notice-Information Collection; 60-Day Renewal.	07/06/18	83 FR 31561
Notice-Information Collection; 30-Day Renewal.	10/31/18	83 FR 54761
Final Rule .....	03/00/23	

*Regulatory Flexibility Analysis**Required:* No.*Government Levels Affected:* None.*URL For More Information:*[www.regulations.gov](http://www.regulations.gov).*URL For Public Comments:*[www.regulations.gov](http://www.regulations.gov).

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*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](mailto: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](mailto: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.

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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-policy@fema.dhs.gov](mailto:fema-recovery-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](mailto: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](mailto: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](http://www.regulations.gov).*URL For Public Comments:*[www.regulations.gov](http://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](mailto: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](http://www.regulations.gov).*URL For Public Comments:*[www.regulations.gov](http://www.regulations.gov).*Agency Contact:* Ryan Donaghy, Deputy Branch Chief for Chemical Security Policy, Rulemaking, and Engagement, Department of HomelandSecurity, 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](mailto:ryan.donaghy@cisa.dhs.gov).*Related RIN:* Previously reported as 1601-AA69, Merged with 1670-AA03  
*RIN:* 1670-AA01**BILLING CODE 9110-98-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 Plants; 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](mailto: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.<sup>1</sup>

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](mailto:DRW@dea.gov).

*URL For Public Comments:*

[www.regulations.gov](http://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 Morrisette Drive, Springfield, VA 22152, Phone: 571 362-8209, Email: [scott.a.brinks@dea.gov](mailto: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

<sup>1</sup> 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](http://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 Morrisette Drive, Springfield, VA 22152, Phone: 571 362-8209, Email: [scott.a.brinks@dea.gov](mailto: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](mailto: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>.

**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](mailto:pao.eoir@usdoj.gov).

**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](mailto: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](mailto: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](mailto:pao.eoir@usdoj.gov).

*Related RIN:* Related to 1615–AC67

*RIN:* 1125–AB20

**BILLING CODE 4410–BP–P**

**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 Re-scission.	11/09/21	86 FR 62115
Notification of Proposed Re-scission 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](mailto: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](mailto: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](mailto: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 ADMINISTRATION (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 associated 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 Rule-making 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 underreported 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 and instead rely upon the General Duty Clause (OSH Act Section 5(a)(1) for select enforcement activity). As OSHA develops more information, it will also make decisions relating to the scope of the standard and the requirements it may impose.

**Anticipated Cost and Benefits:** The estimates of costs and benefits are still under development.

**Risks:** Analysis of risks is still under development.

**Timetable:**

Action	Date	FR Cite
ANPRM .....	10/27/21	86 FR 59309
ANPRM Comment Period Extended.	12/02/21	86 FR 68594
ANPRM Comment Period Extended End.	01/26/22	
Initiate SBREFA ..	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

Action	Date	FR Cite
Interim Final Rule	06/21/21	86 FR 38232
Comment Period Extended.		
Interim Final Rule	08/20/21	
Comment Period Extended		
End.		
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](http://www.regulations.gov).

*URL For Public Comments:*

[www.regulations.gov](http://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](mailto: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](http://www.regulations.gov).

*URL For Public Comments:*

[www.regulations.gov](http://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](mailto: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](http://www.regulations.gov).

**URL For Public Comments:**  
[www.regulations.gov](http://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](mailto: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	

Action	Date	FR Cite
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](http://www.regulations.gov).

**URL For Public Comments:**

[www.regulations.gov](http://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](mailto: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](http://www.regulations.gov).

**URL For Public Comments:**

[www.regulations.gov](http://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](mailto: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](http://www.regulations.gov).

**URL For Public Comments:**

[www.regulations.gov](http://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](mailto: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](http://www.regulations.gov).

**URL For Public Comments:**

[www.regulations.gov](http://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](mailto: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](http://www.regulations.gov).

**URL For Public Comments:**

[www.regulations.gov](http://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](mailto: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](http://www.regulations.gov).

*URL For Public Comments:*  
[www.regulations.gov](http://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](mailto: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](http://www.regulations.gov).

*URL For Public Comments:*  
[www.regulations.gov](http://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](mailto: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 assister. 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](https://irs.gov) and [regulations.gov](https://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 associated 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 its 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](http://www.regulations.gov).

*Agency Contact:* Robert Parks,  
 Department of Veterans Affairs, 1800 G  
 Street NW, Washington, DC 20006,  
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*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](http://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:*  
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*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](http://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](mailto: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](http://www.regulations.gov).

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**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](http://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](mailto: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](http://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](mailto: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](http://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](mailto: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](http://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](mailto: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](mailto: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](http://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](mailto: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](http://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](mailto: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](http://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](mailto: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 of 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](https://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<sub>x</sub>), for nearly half a century. Current data suggest that existing standards should be revised to ensure full, in-use emission control. NO<sub>x</sub> emissions are major precursors of ozone and significant contributors to secondary PM<sub>2.5</sub> formation. Reducing NO<sub>x</sub> 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 Commercial 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,

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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](mailto: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.

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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](mailto: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; 22112 Fossil Fuel Electric Power Generation.

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**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.

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**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.

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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.

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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:**

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**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.

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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:*

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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:*

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*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:*

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*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 assess 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.

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*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:*

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*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.

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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.

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RIN: 2060-AV83

**EPA—OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVENTION (OCSP)**

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>.

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**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>.

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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>.

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*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>.

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*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>.

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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>.

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*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>.

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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](mailto: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 ( $\mu\text{g}/\text{ft}^2$ ) to 10  $\mu\text{g}/\text{ft}^2$  for floors, and from 250  $\mu\text{g}/\text{ft}^2$  to 100  $\mu\text{g}/\text{ft}^2$  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  $\mu\text{g}/\text{ft}^2$  to 10  $\mu\text{g}/\text{ft}^2$  for floors, and from 250  $\mu\text{g}/\text{ft}^2$  to 100  $\mu\text{g}/\text{ft}^2$  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 ( $\mu\text{g}/\text{ft}^2$ ) to 10  $\mu\text{g}/\text{ft}^2$  for floors, and from 250  $\mu\text{g}/\text{ft}^2$  to 100  $\mu\text{g}/\text{ft}^2$  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  $\mu\text{g}/\text{ft}^2$  to 10  $\mu\text{g}/\text{ft}^2$  for floors, and from 250  $\mu\text{g}/\text{ft}^2$  to 100  $\mu\text{g}/\text{ft}^2$  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](mailto:brisse.claire@epa.gov).

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**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	

Action	Date	FR Cite
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](mailto: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](mailto: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](mailto: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.

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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.

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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](mailto: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](mailto: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 07/00/24	
Final Rule .....		

#### *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](mailto: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](mailto: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](mailto: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.eric@epa.gov](mailto:fleisig.eric@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<sub>x</sub> 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<sub>x</sub> 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](mailto: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](mailto: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.

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*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>.

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**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>.

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*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 (HSWA) 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.regulations.gov/docket?D=EPA-HQ-OLEM-2019-0173>.

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*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

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*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:*

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*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:*

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*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.

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#### **NATIONAL SCIENCE FOUNDATION**

##### **Overview**

The National Science Foundation (NSF) is an independent federal agency created by Congress in 1950 "to promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense . . ." NSF is vital because we support basic

research and people to create knowledge that transforms the future. This type of support:

- Is a primary driver of the U.S. economy
- Enhances the nation's security
- Advances knowledge to sustain global leadership

With an annual budget of \$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.

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*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 trusted by PBGC, and recoveries from the companies formerly responsible for the trusted 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](mailto: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](mailto: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,<sup>1</sup> 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

<sup>1</sup> SBA, *Equity Action Plan*, available at [https://assets.performance.gov/cx/equity-action-plans/2022/E.O.%2013985\\_SBA\\_Equity%20Action%20Plan\\_2022.pdf](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 prioritize: (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 statutes, 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](http://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](mailto: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](mailto: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 statutes, 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](http://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](mailto: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	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

Action	Date	FR Cite
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.

RIN: 3041-AD65

BILLING CODE 6355-01-P

**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.<sup>1</sup> 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.<sup>2</sup> As the Supreme Court noted in *AMG*, however, consumer redress remains available for cases that involve a consumer-protection rule violation.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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<sup>6</sup> 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.<sup>7</sup>

The second new consumer-protection rulemaking focused on unfair or deceptive earnings claims.<sup>8</sup> 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."<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup> 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."<sup>13</sup> The NPRM

<sup>1</sup> See Fed. Trade Comm'n, Statement of Regulatory Priorities (2021), [https://www.reginfo.gov/public/jsp/eAgenda/StaticContent/202110/Statement\\_3084\\_FTC.pdf](https://www.reginfo.gov/public/jsp/eAgenda/StaticContent/202110/Statement_3084_FTC.pdf).

<sup>2</sup> 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/bills/117/congress/house-bill/2668/actions>.

<sup>3</sup> See *AMG Capital*, 141 S. Ct. at 1352.

<sup>4</sup> 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/p210100-commstmtsec18rulesofpractice.pdf](https://www.ftc.gov/system/files/documents/public_statements/1591786/p210100-commstmtsec18rulesofpractice.pdf).

<sup>5</sup> 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>.

<sup>6</sup> 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").

<sup>7</sup> 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>.

<sup>8</sup> 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>.

<sup>9</sup> *Id.*, 87 FR at 13953.

<sup>10</sup> 2021 Statement of Regulatory Priorities at 2.

<sup>11</sup> 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>.

<sup>12</sup> 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 was authorized by a specific enactment of Congress to begin this rulemaking with an NPRM. See 12 U.S.C. 5519(d).

<sup>13</sup> 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.<sup>14</sup> 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."<sup>15</sup> These potential updates to the TSR, and proposed updates to other rules such as the Amplifier Rule<sup>16</sup> and the Energy Labeling Rule,<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup> The Commission also accepted several petitions under its new process for public rulemaking petitions;<sup>20</sup> each received a notice in the **Federal Register**<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> 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

[https://www.ftc.gov/system/files/ftc\\_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf](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/>.

<sup>23</sup> 58 FR 51735 (Sept. 30, 1993).

<sup>14</sup> 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>.

<sup>15</sup> Fed. Trade Comm'n, ANPR—Telemarketing Sales Rule, 87 FR 33662, 33662 (June 3, 2022).

<sup>16</sup> 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>.

<sup>17</sup> 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>.

<sup>18</sup> 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.

<sup>19</sup> 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).

<sup>20</sup> See 16 CFR 1.31.

<sup>21</sup> 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).

<sup>22</sup> Fed. Trade Comm'n, FTC Strategic Plan for Fiscal Years 2022 to 2026, at 16 (Aug. 26, 2022),

“significant economic impact upon a substantial number of small entities.”<sup>24</sup>

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.<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup> 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”).<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> The comment period, as extended, closed on June 22, 2020.<sup>32</sup> On July 26, 2022, the Commission sought public comments on proposed changes to the Guides.<sup>33</sup> 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

<sup>24</sup> 5 U.S.C. 610.

<sup>25</sup> 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>.

<sup>26</sup> 87 FR 72428 (Nov. 25, 2022).

<sup>27</sup> 80 FR 1329 (Jan. 9, 2015).

<sup>28</sup> 85 FR 77042 (Dec. 1, 2020).

<sup>29</sup> 84 FR 35842 (July 25, 2019).

<sup>30</sup> 84 FR 56391 (Oct. 22, 2019).

<sup>31</sup> 85 FR 10104 (Feb. 21, 2020).

<sup>32</sup> 85 FR 19709 (Apr. 8, 2020).

<sup>33</sup> 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”).<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup> 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).<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup>

*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”).<sup>42</sup> 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

<sup>40</sup> 80 FR 53274 (Sept. 3, 2015).

<sup>41</sup> 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.

<sup>42</sup> 85 FR 82391 (Dec. 18, 2020).

<sup>34</sup> 84 FR 9051 (Mar. 13, 2019).

<sup>35</sup> 85 FR 55850 (Sept. 10, 2020).

<sup>36</sup> 85 FR 31085 (May 22, 2020).

<sup>37</sup> 83 FR 63604 (Dec. 11, 2018).

<sup>38</sup> 84 FR 8045 (Mar. 6, 2019).

<sup>39</sup> 84 FR 52393 (Oct. 2, 2019).

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.<sup>43</sup> 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.<sup>44</sup> 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.<sup>45</sup>

**Telemarketing Sales Rule, 16 CFR part 310.** On August 11, 2014, the Commission initiated a periodic review of the Telemarketing Sales Rule ("TSR").<sup>46</sup> The comment period as extended closed on November 13, 2014.<sup>45</sup> On June 3, 2022, the Commission issued a Notice of Proposed Rulemaking seeking public comment on proposed amendments to the TSR.<sup>46</sup> 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.<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup> 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).<sup>53</sup> The comment period as extended closed on June 15, 2020.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup>

**Unfair or Deceptive Fees Trade Regulation Rule, 16 CFR part 464.** On November 8, 2022, the Commission

<sup>43</sup> 87 FR 45047 (July 27, 2022).

<sup>44</sup> 86 FR 70272 (Dec. 9, 2021).

<sup>45</sup> See II(b), *Proposed Rules*, above for information about a separate and ongoing rulemaking under the Safeguards Rule.

<sup>46</sup> 79 FR 46732 (Aug. 11, 2014).

<sup>47</sup> 79 FR 61267 (Oct. 10, 2014).

<sup>48</sup> 87 FR 33677 (June 3, 2022).

<sup>47</sup> 87 FR 33662 (June 3, 2022).

<sup>48</sup> 87 FR 42012 (July 13, 2022).

<sup>49</sup> 87 FR 62741 (Oct. 17, 2022).

<sup>50</sup> 87 FR 13951 (Mar. 11, 2022).

<sup>51</sup> 87 FR 51273 (Aug. 22, 2022).

<sup>52</sup> 87 FR 63738 (Oct. 20, 2022).

<sup>53</sup> 85 FR 8490 (Feb. 14, 2020).

<sup>54</sup> 85 FR 20453 (Apr. 13, 2020).

<sup>55</sup> 87 FR 66096 (Nov. 2, 2022).

<sup>56</sup> 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.<sup>57</sup> 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.<sup>58</sup> 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.<sup>59</sup> 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.<sup>60</sup> 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.<sup>61</sup> 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.<sup>62</sup>

*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.<sup>63</sup> 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.<sup>64</sup> 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.<sup>65</sup> 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.<sup>66</sup> 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.<sup>67</sup>

#### 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.<sup>68</sup> 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.

**BILLING CODE 6750-01-P**

## NATIONAL INDIAN GAMING COMMISSION (NIGC)

### Statement of Regulatory Priorities

In 1988, Congress adopted the Indian Gaming Regulatory Act (IGRA) (Pub. L. 100-497, 102 Stat. 2475) with a primary

<sup>57</sup> 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>.

<sup>58</sup> 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>.

<sup>59</sup> 84 FR 13150 (Apr. 4, 2019).

<sup>60</sup> 86 FR 70020 (Dec. 9, 2021).

<sup>61</sup> 86 FR 70272 (Dec. 9, 2021).

<sup>62</sup> 87 FR 71509 (Nov. 23, 2022); see also II(b), *Proposed Rules*, above for information about a separate and ongoing rulemaking under the Safeguards Rule.

<sup>63</sup> 86 FR 29533 (June 2, 2021).

<sup>64</sup> 86 FR 57985 (Oct. 20, 2021).

<sup>65</sup> 87 FR 31754 (May 25, 2022).

<sup>66</sup> 87 FR 61465 (Oct. 12, 2022).

<sup>67</sup> See II(b), *Proposed Rules*, above for information about a separate and pending rulemaking proceeding under the Energy Labeling Rule.

<sup>68</sup> 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 (EPAAct), 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–A]55

## 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 Andrukut, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555–0001, *Phone:* 301 415–3561, *Email:* dennis.andrukut@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.

*RIN:* 3150-AK58

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Part III

Department of Agriculture

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Semiannual Regulatory Agenda

**DEPARTMENT OF AGRICULTURE****Office of the Secretary****2 CFR Subtitle B, Ch. IV****5 CFR Ch. LXXIII****7 CFR Subtitle A; Subtitle B, Chs. I–XI, XIV–XVIII, XX, XXV–XXXVIII, XLII****9 CFR Chs. I–III****36 CFR Ch. II****48 CFR Ch. 4****Semiannual Regulatory Agenda, Fall 2022****AGENCY:** Office of the Secretary, USDA.**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** This agenda provides summary descriptions of significant and not significant regulations being developed in agencies of the U.S. Department of Agriculture (USDA) in conformance with Executive Orders (E.O.) 12866, “Regulatory Planning and Review,” and 13563, “Improving

Regulation and Regulatory Review.” The agenda also describes regulations affecting small entities as required by section 602 of the Regulatory Flexibility Act, Public Law 96–354. This agenda also identifies regulatory actions that are being reviewed in compliance with section 610(c) of the Regulatory Flexibility Act. We invite public comment on those actions as well as any regulation consistent with Executive Order 13563.

USDA has attempted to list all regulations and regulatory reviews pending at the time of publication except for minor and routine or repetitive actions, but some may have been inadvertently missed. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the date shown.

USDA’s complete regulatory agenda is available online at [www.reginfo.gov](http://www.reginfo.gov). Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), USDA’s printed agenda entries include only:

(1) Rules that are likely to have a significant economic impact on a substantial number of small entities; and

(2) Rules identified for periodic review under section 610 of the Regulatory Flexibility Act.

For this edition of the USDA regulatory agenda, the most important regulatory actions are summarized in a Statement of Regulatory Priorities that is included in the Regulatory Plan, which appears in both the online regulatory agenda and in part II of the **Federal Register** that includes the abbreviated regulatory agenda.

**FOR FURTHER INFORMATION CONTACT:** For further information on any specific entry shown in this agenda, please contact the person listed for that action. For general comments or inquiries about the agenda, please contact Mr. Michael Poe, Office of Budget and Program Analysis, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–3257.

Dated: September 30, 2022.

**Michael Poe,**  
*Legislative and Regulatory Staff.*

**AGRICULTURAL MARKETING SERVICE—PRERULE STAGE**

Sequence No.	Title	Regulation Identifier No.
227 .....	Inert Ingredients in Pesticides for Organic Production (AMS–NOP–21–0008) .....	0581–AE02

**AGRICULTURAL MARKETING SERVICE—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
228 .....	Inclusive Competition and Market Integrity Under the Packers and Stockyards Act (AMS–FTPP–21–0045) <b>(Reg Plan Seq No. 2).</b>	0581–AE05
229 .....	Natural Grass Sod Promotion, Research, and Information Order (AMS–LP–21–0028) .....	0581–AE07
230 .....	Organic Market Development for Mushrooms and Pet Food (AMS–NOP–22–0063) .....	0581–AE13

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

**AGRICULTURAL MARKETING SERVICE—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
231 .....	Strengthening Organic Enforcement (AMS–NOP–17–0065) .....	0581–AD09
232 .....	Dairy Donation Program (AMS–DA–21–0013) .....	0581–AE00
233 .....	Preserving Trust Benefits Under the Packers and Stockyards Act (AMS–FTPP–21–0015) .....	0581–AE01
234 .....	Transparency in Poultry Grower Contracting and Tournaments (AMS–FTPP–21–0044) <b>(Reg Plan Seq No. 4).</b>	0581–AE03
235 .....	Organic Livestock and Poultry Standards (AMS–NOP–21–0073) <b>(Reg Plan Seq No. 5)</b> .....	0581–AE06

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

**AGRICULTURAL MARKETING SERVICE—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
236 .....	Organic Aquaculture Standards .....	0581–AD34
237 .....	Organic Apiculture Production Standards .....	0581–AE12



## AGRICULTURAL MARKETING SERVICE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
238 .....	Organic Mushroom Standards .....	0581–AE14

## ANIMAL AND PLANT HEALTH INSPECTION SERVICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
239 .....	Animal Disease Traceability; Electronic Identification .....	0579–AE64
240 .....	Revision to Horse Protection Act Regulations .....	0579–AE70
241 .....	AQI User Fees .....	0579–AE71
242 .....	Importation of Bovine Meat From Paraguay .....	0579–AE73

## ANIMAL AND PLANT HEALTH INSPECTION SERVICE—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
243 .....	Establishing AWA Standards for Birds .....	0579–AE61

## ANIMAL AND PLANT HEALTH INSPECTION SERVICE—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
244 .....	National List of Reportable Animal Diseases .....	0579–AE39
245 .....	Microchipping, Verifiable Signatures, Government Official Endorsement, and Mandatory Forms for Importation of Live Dogs; Cage Standards for Domestic Dogs.	0579–AE58

## FOOD AND NUTRITION SERVICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
246 .....	Special Supplemental Nutrition Program for Women, Infants and Children (WIC): WIC Online Ordering and Transactions and Food Delivery Revisions to Meet the Needs of a Modern, Data-Driven Program.	0584–AE85

## FOOD AND NUTRITION SERVICE—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
247 .....	National School Lunch and School Breakfast Programs: School Food Service Account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010.	0584–AE11
248 .....	Modernizing Supplemental Nutrition Assistance Program (SNAP) Benefit Redemption Systems .....	0584–AE37
249 .....	Providing Regulatory Flexibility for Retailers in the Supplemental Nutrition Assistance Program (SNAP) ....	0584–AE61
250 .....	Strengthening Integrity and Reducing Retailer Fraud in the Supplemental Nutrition Assistance Program (SNAP).	0584–AE71

## FOREST SERVICE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
251 .....	Special Uses—Communications Uses Rent .....	0596–AD43

**DEPARTMENT OF AGRICULTURE  
(USDA)**

*Agricultural Marketing Service (AMS)*  
Prerule Stage

**227. Inert Ingredients in Pesticides for Organic Production (AMS–NOP–21–0008) [0581–AE02]**

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

*Abstract:* Based on comments received from the advance notice of proposed rulemaking, this proposed rule seeks public comment on recommendations to replace outdated references in USDA's organic regulations to U.S. Environmental Protection Agency (EPA) policy on inert ingredients in pesticides. Inerts, also known as other ingredients, are any substances other than the active ingredient that are intentionally added to pesticide products. References to outdated EPA policy appear in the USDA organic regulations in the National List of Allowed and Prohibited Substances (National List) and identify the inert ingredients allowed in pesticides for organic production.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	09/02/22	87 FR 54173
ANPR Comment Period Ex- tended.	10/11/22	87 FR 61268
ANPRM Comment Period End.	11/01/22	
ANPRM Comment Period Ex- tended End.	12/31/22	
NPRM .....	09/00/23	

*Regulatory Flexibility Analysis  
Required:* Yes.

*Agency Contact:* Jennifer Tucker, Deputy Administrator, USDA National Organic Program, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW, Washington, DC 20250, *Phone:* 202 260–8077, *Email:* jennifer.tucker@usda.gov.

*RIN:* 0581–AE02

**DEPARTMENT OF AGRICULTURE  
(USDA)**

*Agricultural Marketing Service (AMS)*  
Proposed Rule Stage

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

*Regulatory Plan:* This entry is Seq. No. 2 in part II of this issue of the **Federal Register**.

*RIN:* 0581–AE05

**229. Natural Grass Sod Promotion, Research, and Information Order (AMS–LP–21–0028) [0581–AE07]**

*Legal Authority:* 7 U.S.C. 7411 to 7425

*Abstract:* This action invites comments on the establishment of an industry-funded promotion, research, and information program for natural grass sod products. The proposed Natural Grass Sod Promotion, Research, and Information Order was submitted to the U.S. Department of Agriculture by Turfgrass Producers International, a group of natural grass sod producers. The program would conduct research, marketing, and promotion activities that will benefit the entire industry. Primary goals of the program include educating consumers and stakeholders of the benefits of natural grass and providing producers with marketing tools they can use to grow their business. The goals identified in this proposed rule would only be attainable through a national research and promotion program for natural grass sod.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/00/23	

*Regulatory Flexibility Analysis  
Required:* Yes.

*Agency Contact:* Jeana Harbison, Deputy Director of Livestock and Poultry Program, Department of Agriculture, Agricultural Marketing Service, Washington, DC 20024, *Phone:* 202 690–3192, *Email:* jeana.m.harbison@usda.gov.

*RIN:* 0581–AE07

**230. Organic Market Development for Mushrooms and Pet Food (AMS–NOP–22–0063) [0581–AE13]**

*Legal Authority:* 7 U.S.C. 6501

*Abstract:* This action seeks comments on the proposed amendments to USDA organic regulations that would (a) develop organic pet food standards and (b) establish standards for the organic production and certification of mushrooms. The title and scope of proposed action “Organic Pet Food Standards” has been revised to include the establishment of standards for the production and certification of mushrooms, which was previously proposed under withdrawn RIN 0851–AE14.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/23	

*Regulatory Flexibility Analysis  
Required:* Yes.

*Agency Contact:* Jennifer Tucker, Deputy Administrator, USDA National Organic Program, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW, Washington, DC 20250, *Phone:* 202 260–8077, *Email:* jennifer.tucker@usda.gov.

*RIN:* 0581–AE13

**DEPARTMENT OF AGRICULTURE  
(USDA)**

*Agricultural Marketing Service (AMS)*  
Final Rule Stage

**231. Strengthening Organic Enforcement (AMS–NOP–17–0065) [0581–AD09]**

*Legal Authority:* 7 U.S.C. 6501

*Abstract:* The Strengthening Organic Enforcement (SOE) final rule will amend the USDA organic regulations to strengthen oversight and enforcement of the production, handling, and sale of organic agricultural products.

Topics addressed in this rule include: Applicability of the regulations and exemptions from organic certification; National Organic Program Import Certificates; recordkeeping and product traceability; certifying agent personnel qualifications and training; standardized certificates of organic operation; unannounced on-site inspections of certified operations; oversight of certification activities; foreign conformity assessment systems; certification of grower group operations; labeling of nonretail containers; annual update requirements for certified operations; compliance and appeals processes; and calculating organic content of multi-ingredient products.

*Timetable:*

Action	Date	FR Cite
Proposed Rule ....	08/05/20	85 FR 47536
Comment Period End.	10/05/20	
Final Rule .....	12/00/22	

*Regulatory Flexibility Analysis  
Required:* Yes.

*Agency Contact:* Jennifer Tucker, Deputy Administrator, USDA National Organic Program, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW, Washington, DC 20250, *Phone:* 202 260–8077, *Email:* jennifer.tucker@usda.gov.

*RIN:* 0581–AD09

**232. Dairy Donation Program (AMS–DA–21–0013) [0581–AE00]**

*Legal Authority:* Pub. L. 116–260, sec. 762

*Abstract:* This rulemaking will finalize the Dairy Donation Program, which was authorized in the Consolidated Appropriations Act of 2021. The Dairy Donation Program is a voluntary program that reimburses eligible dairy organizations for milk used to make eligible dairy products donated to non-profit groups for distribution to low-income persons.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	09/01/21	86 FR 48887
Interim Final Rule Comment Period End.	11/01/21	
Final Rule .....	02/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Erin Taylor, Acting Director, Order Formulation and Enforcement Division, Department of Agriculture, Agricultural Marketing Service, Dairy Program, 1400 Independence Avenue SW, Room 2969–S, Washington, DC 20250, *Phone:* 202 720–7311, *Email:* erin.taylor@ams.usda.gov.

*RIN:* 0581–AE00

**233. Preserving Trust Benefits Under the Packers and Stockyards Act (AMS–FTPP–21–0015) [0581–AE01]**

*Legal Authority:* Pub. L. 116–260, sec. 763

*Abstract:* This action will revise the Packers and Stockyards regulations to add provisions for written notifications related to the new livestock dealer trust. The revisions will outline the process for livestock sellers to notify livestock dealers and the Secretary of the seller's intent to preserve their interest in trust benefits should the dealer fail to pay for livestock purchased. The revisions will also require livestock sellers to acknowledge in writing that they forfeit rights to the dealer trust under the terms of credit sales to dealers. These provisions will mirror existing regulatory provisions related to livestock and poultry sales under the Packers and Stockyards Act.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/05/22	87 FR 26695
NPRM Comment Period End.	06/06/22	
Final Rule .....	01/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Stuart Frank, Division Director, Packers and Stockyards Division, Department of Agriculture, Agricultural Marketing Service, Federal Building; Room 917, 210 Walnut Street, Des Moines, IA 50309, *Phone:* 515 323–2586, *Email:* stuart.frank@usda.gov.

*RIN:* 0581–AE01

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

*Regulatory Plan:* This entry is Seq. No. 4 in part II of this issue of the **Federal Register**.

*RIN:* 0581–AE03

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

*Regulatory Plan:* This entry is Seq. No. 5 in part II of this issue of the **Federal Register**.

*RIN:* 0581–AE06

**DEPARTMENT OF AGRICULTURE (USDA)**

*Agricultural Marketing Service (AMS)*

Long-Term Actions

**236. Organic Aquaculture Standards [0581–AD34]**

*Legal Authority:* 7 U.S.C. 6501 to 6522

*Abstract:* This action proposes to establish standards for organic production and certification of farmed aquatic animals and their products in the USDA organic regulations. This action would also add aquatic animals as a scope of certification and accreditation under the National Organic Program (NOP).

*Timetable:*

Action	Date	FR Cite
NPRM .....	To Be Determined	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jennifer Tucker, *Phone:* 202 260–8077, *Email:* jennifer.tucker@usda.gov.

*RIN:* 0581–AD34

**237. Organic Apiculture Production Standards [0581–AE12]**

*Legal Authority:* 7 U.S.C. 6501

*Abstract:* This action proposes to amend the USDA organic regulations to reflect an October 2010 recommendation submitted to the Secretary by the National Organic Standards Board (NOSB) concerning the

production of organic apicultural (or beekeeping) products.

*Timetable:*

Action	Date	FR Cite
NPRM .....	To Be Determined	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jennifer Tucker, *Phone:* 202 260–8077, *Email:* jennifer.tucker@usda.gov.

*RIN:* 0581–AE12

**DEPARTMENT OF AGRICULTURE (USDA)**

*Agricultural Marketing Service (AMS)*

Completed Actions

**238. Organic Mushroom Standards [0581–AE14]**

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

*Abstract:* This action, proposing to establish standards for the organic production and certification of mushrooms in the USDA organic regulations, is being withdrawn and combined with the action proposing to develop organic pet food standards (RIN 0581–AE13).

*Completed:*

Reason	Date	FR Cite
Withdrawn .....	09/15/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jennifer Tucker, *Phone:* 202 260–8077, *Email:* jennifer.tucker@usda.gov.

*RIN:* 0581–AE14

**BILLING CODE 3410–02–P**

**DEPARTMENT OF AGRICULTURE (USDA)**

*Animal and Plant Health Inspection Service (APHIS)*

Proposed Rule Stage

**239. Animal Disease Traceability; Electronic Identification [0579–AE64]**

*Legal Authority:* 7 U.S.C. 8301 *et seq.*

*Abstract:* This action would amend APHIS' animal disease traceability regulations, currently codified at 9 CFR part 86. The primary proposed change would require that beginning June 30, 2023, APHIS would only recognize identification devices (e.g., eartags) as official identification for cattle and bison covered by the regulations if the devices have both visual and electronic

readability (EID). Other proposed changes are intended to clarify language and requirements in several sections of part 86. These changes would enhance the U.S. traceability system to better achieve goals of rapidly tracing diseased and exposed animals and containing outbreaks.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/22	
NPRM Comment Period End.	02/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Dr. Aaron Scott Ph.D., DACVPM, Director, Department of Agriculture, Animal and Plant Health Inspection Service, National Animal Disease Traceability and Veterinary Accreditation Center, APHIS Veterinary Services Strategy and Policy, 2150 Centre Avenue, Building B (Mail Stop 3E87), Fort Collins, CO 80526, *Phone:* 970 494-7249, *Email:* traceability@usda.gov.

*RIN:* 0579-AE64

#### 240. Revision to Horse Protection Act Regulations [0579-AE70]

*Legal Authority:* 15 U.S.C. 1823

*Abstract:* Current Horse Protection Act (HPA) regulations require Designated Qualified Persons (DQPs) to be licensed directly through Horse Industry Organizations (HIOs). DQPs conduct inspections of horses at HIO-affiliated shows, sales, auctions, and exhibitions to determine compliance with the HPA. We are proposing to amend the Horse Protection regulations by eliminating the role of HIOs and DQPs as inspectors at horse shows, exhibitions, sales, and auctions, and assigning inspection authority solely to Animal and Plant Health Inspection Service (APHIS) Veterinary Medical Officers and other persons authorized by APHIS. Other changes are also being contemplated.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/22	
NPRM Comment Period End.	02/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Lance Bassage, VMD, Director, National Policy Staff, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road Unit 84, Riverdale, MD 20737, *Phone:* 301 851-3748, *Email:* lance.h.bassage@usda.gov.

*RIN:* 0579-AE70

#### 241. AQI User Fees [0579-AE71]

*Legal Authority:* 21 U.S.C. 136a

*Abstract:* We are proposing multiple revisions to our AQI user fee regulations in order to facilitate full cost recovery as required by 21 U.S.C. 136a. We are proposing to update the fees using more current operational data, as well as update the fees to incorporate recurring costs such as capital improvements and staffing needs. Inflation would also be incorporated into our model. Other changes are also being contemplated.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/00/23	
NPRM Comment Period End.	05/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* George Balady, PEIP Cost and Fee Analysis, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, MD 20737, *Phone:* 301 851-2338.

*RIN:* 0579-AE71

#### 242. Importation of Bovine Meat From Paraguay [0579-AE73]

*Legal Authority:* 7 U.S.C. 450; 7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786; 7 U.S.C. 8301 to 8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701

*Abstract:* We are proposing to amend the regulations governing the importation of certain animals, meat, and other animal products by allowing, under certain conditions, the importation of fresh (chilled or frozen) beef from Paraguay. Based on the evidence from a risk analysis, we have determined that fresh beef can safely be imported from Paraguay, provided certain conditions are met. This action would provide for the importation of fresh beef from Paraguay into the United States while continuing to protect the United States against the introduction of foot-and-mouth disease.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/23	
NPRM Comment Period End.	03/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Ingrid Kotowski, Regionalization Evaluation Services, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606, *Phone:* 919 855-7732.

*RIN:* 0579-AE73

#### DEPARTMENT OF AGRICULTURE (USDA)

*Animal and Plant Health Inspection Service (APHIS)*

Final Rule Stage

#### 243. Establishing AWA Standards for Birds [0579-AE61]

*Legal Authority:* 7 U.S.C. 2131 to 2159

*Abstract:* This rulemaking would extend APHIS enforcement of the Animal Welfare Act (AWA) to birds, other than birds bred for use in research. This would help ensure the humane care and treatment of such birds.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/22/22	87 FR 9880
NPRM Comment Period End.	04/25/22	
NPRM Comment Period Extended.	04/22/22	87 FR 24072
NPRM Comment Period Extended End.	05/25/22	
Final Rule .....	02/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Dr. Cody Yager, DVM, MPH, Avian Specialist, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road Unit 84, Riverdale, MD 20737, *Phone:* 970 494-7478, *Email:* cody.m.yager@usda.gov.

*RIN:* 0579-AE61

#### DEPARTMENT OF AGRICULTURE (USDA)

*Animal and Plant Health Inspection Service (APHIS)*

Long-Term Actions

#### 244. National List of Reportable Animal Diseases [0579-AE39]

*Legal Authority:* 7 U.S.C. 8301 to 8317

*Abstract:* This rulemaking amends our disease regulations to provide for a National List of Reportable Animal Diseases, along with reporting responsibilities for animal health professionals that encounter or suspect cases of communicable animal diseases and disease agents. The changes are necessary to streamline State and Federal cooperative animal disease detection, response, and control efforts. This action will consolidate and enhance current disease reporting

mechanisms, and it will complement and supplement existing animal disease tracking and reporting at the State level.  
*Timetable:*

Action	Date	FR Cite
NPRM .....	04/02/20	85 FR 18471
NPRM Comment Period End.	06/01/20	
NPRM Comment Period Re-opened.	08/18/20	85 FR 50796
NPRM Comment Period Re-opened End.	08/21/20	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jane Rooney, *Phone:* 970 494-7397  
*RIN:* 0579-AE39

**245. Microchipping, Verifiable Signatures, Government Official Endorsement, and Mandatory Forms for Importation of Live Dogs; Cage Standards for Domestic Dogs [0579-AE58]**

*Legal Authority:* 7 U.S.C. 2131 to 2159  
*Abstract:* We are proposing to amend the regulations regarding the importation of live dogs by requiring all live dogs imported into the United States for resale purposes to be microchipped for permanent identification, and to require importers to procure a microchip reader and make it available to port-of-entry officials as requested. This action would also add microchipping as one of three identification options for dogs and cats used by dealers, exhibitors and research facilities. In addition, APHIS is proposing to require a verifiable signature on the health certificate and rabies certificate accompanying imported live dogs, an endorsement of the health certificate by a government official in the country of origin, and the mandatory use of forms provided by APHIS. Additionally, we are proposing to update cage standards for dogs held domestically by dealers or exhibitors who are licensed under the Animal Welfare Act or used in research at registered facilities. Other changes are also being contemplated.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Lance Bassage, *Phone:* 301 851-3748, *Email:* lance.h.bassage@usda.gov.

*RIN:* 0579-AE58

**BILLING CODE 3410-34-P**

**DEPARTMENT OF AGRICULTURE (USDA)**

*Food and Nutrition Service (FNS)*

Proposed Rule Stage

**246. Special Supplemental Nutrition Program for Women, Infants and Children (WIC): WIC Online Ordering and Transactions and Food Delivery Revisions To Meet the Needs of a Modern, Data-Driven Program [0584-AE85]**

*Legal Authority:* Pub. L. 111-296  
*Abstract:* This rule addresses key regulatory barriers to online ordering in the WIC Program by making changes to the provisions that prevent online transactions and types of online capable stores from participating in the Program. This rule will also allow FNS to modernize WIC vendor regulations that do not reflect current technology and facilitate the Program's transition to EBT.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Michael DePiro, Department of Agriculture, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314, *Phone:* 703 305-2876, *Email:* michael.depiro@usda.gov.  
Maureen Lydon, Department of Agriculture, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314, *Phone:* 703 457-7713, *Email:* maureen.lydon@usda.gov.  
*RIN:* 0584-AE85

**DEPARTMENT OF AGRICULTURE (USDA)**

*Food and Nutrition Service (FNS)*

Long-Term Actions

**247. National School Lunch and School Breakfast Programs: School Food Service Account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010 [0584-AE11]**

*Legal Authority:* Pub. L. 111-296  
*Abstract:* This rule amends National School Lunch Program (NSLP) regulations to conform to requirements contained in the Healthy, Hunger-Free Kids Act of 2010 regarding equity in school lunch pricing and revenue from

non-program foods sold in schools. This rule requires school food authorities (SFAs) participating in the NSLP to provide the same level of financial support for lunches served to students who are not eligible for free or reduced-price lunches as is provided for lunches served to students eligible for free lunches. This rule also requires that all food sold in a school and purchased with funds from the nonprofit school food service account other than meals and supplements reimbursed by the Department of Agriculture must generate revenue at least proportionate to the cost of such foods.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	06/17/11	76 FR 35301
Interim Final Rule Effective.	07/01/11	
Interim Final Rule Comment Period End.	09/15/11	
Final Rule .....	05/00/24	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Michael DePiro, *Phone:* 703 305-2876, *Email:* michael.depiro@usda.gov.  
Maureen Lydon, *Phone:* 703 457-7713, *Email:* maureen.lydon@usda.gov.  
*RIN:* 0584-AE11

**248. Modernizing Supplemental Nutrition Assistance Program (SNAP) Benefit Redemption Systems [0584-AE37]**

*Legal Authority:* Pub. L. 113-79  
*Abstract:* The Food and Nutrition Service (FNS) will propose changes that collectively modernize SNAP benefit issuance and increase program integrity while streamlining program administration, offering greater flexibility to State agencies, and improving customer service. The rule will propose to codify provisions of the 2014 Farm Bill, the 2018 Farm Bill, and respond to 2018 OIG audit findings. The rule will propose to codify 2014 Farm Bill provisions requiring most SNAP-authorized retailers to pay the costs associated with EBT equipment, supplies and related services and requirements pertaining to the online SNAP payment option. This rule would also propose to codify waivers that have been granted to State agencies to implement practices that have proven beneficial as the EBT system has developed and matured, address Disaster-SNAP requirements for on-going households, and update EBT system technical and functional requirements.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/24	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Charles H. Watford, Phone: 703 605–0800, Email: [charles.watford@usda.gov](mailto:charles.watford@usda.gov).

*Maureen Lydon, Phone:* 703 457–7713, Email: [maureen.lydon@usda.gov](mailto:maureen.lydon@usda.gov).  
RIN: 0584–AE37

**249. Providing Regulatory Flexibility for Retailers in the Supplemental Nutrition Assistance Program (SNAP) [0584–AE61]**

*Legal Authority:* Pub. L. 113–79; 7 U.S.C. 2011 to 2036

*Abstract:* The Agricultural Act of 2014 amended the Food and Nutrition Act of 2008 to increase the requirement that certain Supplemental Nutrition Assistance Program (SNAP) authorized retail food stores have available on a continuous basis at least three varieties of items in each of four staple food categories, to a mandatory minimum of seven varieties. The Food and Nutrition Service (FNS) codified these mandatory requirements. Subsequent annual Agency appropriations bill language prohibited implementation of certain final rule provisions. In response, this change will provide some retailers participating in SNAP as authorized food stores with more flexibility in meeting the enhanced SNAP eligibility requirements.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/05/19	84 FR 13555
NPRM Comment Period End.	06/04/19	
NPRM Comment Period Re-opened.	06/14/19	84 FR 27743
NPRM Comment Period Reopen End.	06/20/19	
Final Action .....	04/00/25	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Charles H. Watford, Phone: 703 605–0800, Email: [charles.watford@usda.gov](mailto:charles.watford@usda.gov).

*Maureen Lydon, Phone:* 703 457–7713, Email: [maureen.lydon@usda.gov](mailto:maureen.lydon@usda.gov).  
RIN: 0584–AE61

**250. Strengthening Integrity and Reducing Retailer Fraud in the Supplemental Nutrition Assistance Program (SNAP) [0584–AE71]**

*Legal Authority:* Pub. L. 113–79; Pub. L. 115–334

*Abstract:* This proposed rule would implement statutory provisions of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill), the Agriculture Improvement Act of 2018 (the 2018 Farm Bill), and other language intended to deter retailer fraud, abuse, and non-compliance in the Supplemental Nutrition Assistance Program (SNAP).

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/00/24	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Charles H. Watford, Phone: 703 605–0800, Email: [charles.watford@usda.gov](mailto:charles.watford@usda.gov).

*Maureen Lydon, Phone:* 703 457–7713, Email: [maureen.lydon@usda.gov](mailto:maureen.lydon@usda.gov).  
RIN: 0584–AE71

**BILLING CODE 3410–30–P**

**DEPARTMENT OF AGRICULTURE (USDA)**

*Forest Service (FS)*

Completed Actions

**251. Special Uses—Communications Uses Rent [0596–AD43]**

*Legal Authority:* 43 U.S.C. 1761 to 1771

*Abstract:* Consistent with the requirement in title V, section 504 (g) of the Federal Land Policy and Management Act, the proposed rule

would update the Forest Service's rental fee schedule for communications uses based on market value. Updated rental fees that exceed 100 percent of current rental fees would be phased in over a 3-year period. USDA is coordinating development of the information base to support this rulemaking with the Department of the Interior. This proposed rule is being removed from the Forest Service's regulatory agenda because the Forest Service will revise the existing rental fee schedule for communications uses in Forest Service Handbook 2709.11, chapter 90, by publishing a proposed directive for public comment under 36 CFR part 216, rather than by publishing a proposed rule. This approach is consistent with implementation of the rental fee schedule for communications uses in 1996. The Forest Service and the U.S. Department of the Interior's Bureau of Land Management have the same rental fee schedule for communications uses and will coordinate updating of the schedule through public notice and comment.

*Completed:*

Reason	Date	FR Cite
Withdrawn .....	11/16/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Edwina Howard-Agu, Phone: 202 205–1419, Email: [edwina.howard-agu@usda.gov](mailto:edwina.howard-agu@usda.gov).

RIN: 0596–AD43

[FR Doc. 2023–02023 Filed 2–21–23; 8:45 am]

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Part IV

Department of Commerce

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Semiannual Regulatory Agenda



**DEPARTMENT OF COMMERCE****Office of the Secretary****13 CFR Ch. III****15 CFR Subtitle A; Subtitle B, Chs. I, II, III, VII, VIII, IX, and XI****19 CFR Ch. III****37 CFR Chs. I, IV, and V****48 CFR Ch. 13****50 CFR Chs. II, III, IV, and VI****Fall 2021 Semiannual Agenda of Regulations**

**AGENCY:** Office of the Secretary, Commerce.

**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** In compliance with Executive Order 12866, entitled “Regulatory Planning and Review,” and the Regulatory Flexibility Act, as amended, the Department of Commerce (Commerce), in the spring and fall of each year, publishes in the **Federal Register** an agenda of regulations under development or review over the next 12 months. Rulemaking actions are grouped according to pre-rulemaking, proposed rules, final rules, long-term actions, and rulemaking actions completed since the spring 2022 agenda. The purpose of the Agenda is to provide information to the public on regulations that are currently under review, being proposed, or recently issued by Commerce. It is expected that this information will enable the public to participate more effectively in the Department’s regulatory process.

Commerce’s fall 2022 regulatory agenda includes regulatory activities that are expected to be conducted during the period November 1, 2022, through October 31, 2023.

**FOR FURTHER INFORMATION CONTACT:**

*Specific:* For additional information about specific regulatory actions listed in the agenda, contact the individual identified as the contact person.

*General:* Comments or inquiries of a general nature about the agenda should be directed to Candida Harty, Chief Counsel for Regulation, Office of the Assistant General Counsel for Legislation and Regulation, U.S. Department of Commerce, Washington, DC 20230, telephone: 202–482–3410.

**SUPPLEMENTARY INFORMATION:** Commerce hereby publishes its fall 2022 Unified Agenda of Federal Regulatory and Deregulatory Actions pursuant to

Executive Order 12866 and the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Executive Order 12866 requires agencies to publish an agenda of those regulations that are under consideration. By memorandum of September 2, 2022, the Office of Management and Budget issued guidelines and procedures for the preparation and publication of the fall 2022 Unified Agenda. The Regulatory Flexibility Act requires agencies to publish, in the spring and fall of each year, a regulatory flexibility agenda that contains a brief description of the subject of any rule likely to have a significant economic impact on a substantial number of small entities.

The internet is the basic means for disseminating the Unified Agenda. The complete Unified Agenda is available online at [www.reginfo.gov](http://www.reginfo.gov), in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

In this edition of Commerce’s regulatory agenda, a list of the most important significant regulatory and deregulatory actions and a Statement of Regulatory Priorities are included in the Regulatory Plan, which appears in both the online Unified Agenda and in part II of the issue of the **Federal Register** that includes the Unified Agenda.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act, Commerce’s printed agenda entries include only:

(1) Rules that are in the Agency’s regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act’s Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the internet. In addition, for fall editions of the Agenda, Commerce’s entire Regulatory Plan will continue to be printed in the **Federal Register**.

Within Commerce, the Office of the Secretary and various operating units may issue regulations. Among these operating units, the National Oceanic and Atmospheric Administration (NOAA), the Bureau of Industry and Security, and the Patent and Trademark

Office issue the greatest share of Commerce’s regulations.

A large number of regulatory actions reported in the Agenda deal with fishery management programs of NOAA’s National Marine Fisheries Service (NMFS). To avoid repetition of programs and definitions, as well as to provide some understanding of the technical and institutional elements of NMFS’ programs, an “Explanation of Information Contained in NMFS Regulatory Entries” is provided below.

**Explanation of Information Contained in NMFS Regulatory Entries**

The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (the Act) governs the management of fisheries within the Exclusive Economic Zone of the United States (EEZ). The EEZ refers to those waters from the outer edge of the State boundaries, generally 3 nautical miles, to a distance of 200 nautical miles. For fisheries that require conservation and management measures, eight Regional Fishery Management Councils (Councils) prepare and submit to NMFS Fishery Management Plans (FMPs) for the fisheries within their respective areas in the EEZ. Membership of these Councils is comprised of representatives of the commercial and recreational fishing sectors in addition to environmental, academic, and government interests. Council members are nominated by the governors and ultimately appointed by the Secretary of Commerce. The Councils are required by law to conduct public hearings on the development of FMPs and FMP amendments. Consistent with applicable law, environmental and other analyses are developed that consider alternatives to proposed actions.

Pursuant to the Magnuson-Stevens Act, the Councils also recommend actions to NMFS deemed necessary or appropriate to implement FMPs. The proposed regulations, FMPs, and FMP amendments are subject to review and approval by NMFS, based on consistency with the Magnuson-Stevens Act and other applicable law. The Council process for developing FMPs and amendments makes it difficult for NMFS to determine the significance and timing of some regulatory actions under consideration by the Councils at the time the semiannual regulatory agenda is published.

Commerce’s fall 2022 regulatory agenda follows.

**Leslie Kiernan,**  
*General Counsel.*

## GENERAL ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
252 .....	Securing the Information and Communications Technology and Services Supply Chain: Licensing Procedures.	0605-AA60
253 .....	Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities.	0605-AA61

## GENERAL ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
254 .....	Securing the Information and Communications Technology and Services Supply Chain .....	0605-AA51

## INTERNATIONAL TRADE ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
255 .....	Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord with Presidential Proclamation 10414.	0625-AB21

## NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
256 .....	International Fisheries; South Pacific Tuna Fisheries; Implementation of Amendments to the South Pacific Tuna Treaty.	0648-BG04
257 .....	Atlantic Highly Migratory Species; Research and Data Collection in Support of Spatial Fisheries Management.	0648-BI10
258 .....	Amendment 122 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area; Pacific Cod Trawl Cooperative Program.	0648-BL08
259 .....	Amendment 123 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area; Halibut Abundance-Based Management of Amendment 80 Prohibited Species Catch Limit.	0648-BL42
260 .....	Revisions to Federal Regulations to Economic Data Reporting Requirements for Groundfish and Crab Fisheries off Alaska and Amendment 52 to the Fishery Management Plan for BSAI King and Tanner Crabs.	0648-BL50
261 .....	Designation of Critical Habitat for Threatened Indo-Pacific Reef-Building Corals .....	0648-BJ52

## NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
262 .....	Illegal, Unreported, and Unregulated Fishing; Fisheries Enforcement; High Seas Driftnet Fishing Moratorium Protection Act ( <b>Reg Plan Seq No. 17</b> ).	0648-BG11
263 .....	Regulatory Amendment to the Pacific Coast Groundfish Fishery Management Plan to Implement an Electronic Monitoring Program for Bottom Trawl and Non-Whiting Midwater Trawl Vessels.	0648-BH70
264 .....	Magnuson-Stevens Fisheries Conservation and Management Act; Traceability Information Program for Seafood.	0648-BH87
265 .....	Atlantic Highly Migratory Species: Amendment 13 on Bluefin Tuna Management .....	0648-BI08
266 .....	Amendment 23 to the Northeast Multispecies Fishery Management Plan .....	0648-BK17
267 .....	2023–2024 Harvest Specifications and Management Measures for the Pacific Coast Groundfish Fishery ..	0648-BL48
268 .....	Amendment and Updates to the Pelagic Longline Take Reduction Plan .....	0648-BF90
269 .....	Designation of Critical Habitat for the Threatened Caribbean Corals .....	0648-BG26
270 .....	Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule ( <b>Reg Plan Seq No. 18</b> ) .....	0648-BI88
271 .....	Establishment of Time-Area Closures for Hawaiian Spinner Dolphins Under the Marine Mammal Protection Act.	0648-BK04

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
272 .....	Amendment 14 to the Fishery Management Plan for the Salmon Fisheries in the EEZ Off Alaska .....	0648-BK31

## NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
273 .....	Comprehensive Fishery Management Plan for Puerto Rico, Comprehensive Fishery Management Plan for St. Croix, Comprehensive Fishery Management Plan for St. Thomas/St. John.	0648–BD32
274 .....	International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Treatment of U.S. Purse Seine Fishing With Respect to U.S. Territories.	0648–BF41
275 .....	Establish National Insurance Requirements for Observer Providers .....	0648–BJ33
276 .....	Implementation of Resolutions C–21–04 and C–21–06 of the Inter-American Tropical Tuna Commission for Tropical Tuna and Silky Shark Conservation.	0648–BK84
277 .....	Framework Adjustment 63 to the Northeast Multispecies Fishery Management Plan .....	0648–BL12
278 .....	Atlantic Highly Migratory Species; Rule to Modify the Retention Limit of Shortfin Mako Sharks .....	0648–BL17
279 .....	Atlantic Large Whale Take Reduction Plan Modifications to Reduce Serious Injury and Mortality of Large Whales in Commercial Trap/Pot Fisheries Along the U.S. East Coast.	0648–BJ09

## PATENT AND TRADEMARK OFFICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
280 .....	Setting and Adjusting Trademark Fees ( <b>Reg Plan Seq No. 19</b> ) .....	0651–AD65

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## PATENT AND TRADEMARK OFFICE—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
281 .....	Setting and Adjusting Patent Fees .....	0651–AD64

## PATENT AND TRADEMARK OFFICE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
282 .....	Changes To Implement Provisions of the Trademark Modernization Act of 2020 .....	0651–AD55

## DEPARTMENT OF COMMERCE (DOC)

## General Administration (ADMIN)

## Proposed Rule Stage

## 252. Securing the Information and Communications Technology and Services Supply Chain: Licensing Procedures [0605–AA60]

*Legal Authority:* Not Yet Determined

*Abstract:* The Department is seeking public input regarding establishing a licensing process for entities to seek pre-approval before engaging in or continuing to engage in potentially regulated ICTS Transactions under the “Securing the Information and Communications Technology and Services Supply Chain” rule.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	03/29/21	86 FR 16312
ANPRM Comment Period End.	04/28/21	
NPRM .....	05/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Joseph Bartels, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, *Phone:* 202–482–1595, *Email:* jbartels@doc.gov.

*RIN:* 0605–AA60

## 253. Taking Additional Steps To Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities [0605–AA61]

*Legal Authority:* Not Yet Determined

*Abstract:* Executive Order 13984 of January 19, 2021, entitled Taking Additional Steps to Address the National Emergency with Respect to Significant Malicious Cyber-Enabled Activities (E.O. 13984), has directed the Secretary of Commerce (Secretary) to implement regulations that would govern the process and procedures that the Secretary will use to deter foreign malicious cyber actors’ use of United States Infrastructure as a Service (IaaS) products and assist in the investigation of transactions involving foreign malicious cyber actors.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	09/24/21	86 FR 53018
ANPRM Comment Period End.	10/25/21	
NPRM .....	06/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Joseph Bartels, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, *Phone:* 202–482–1595, *Email:* jbartels@doc.gov.

*RIN:* 0605–AA61

## DEPARTMENT OF COMMERCE (DOC)

## General Administration (ADMIN)

## Final Rule Stage

## 254. Securing the Information and Communications Technology and Services Supply Chain [0605–AA51]

*Legal Authority:* 50 U.S.C. 1701; 3 U.S.C. 301

*Abstract:* Pursuant to Executive Order 13873 of May 15, 2019, Securing the Information and Communications

Technology and Services Supply Chain,” (Executive Order) the Department of Commerce (the Department) is implementing the process and procedures that the Secretary of Commerce (Secretary) will use to identify, assess, and address transactions that pose an undue risk to the security, integrity, and reliability of information and communications technology and services provided and used in the United States.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/27/19	84 FR 65316
NPRM Comment Period End.	12/27/19	
Interim Final Rule	01/19/21	86 FR 4909
Interim Final Rule Comment Period End.	03/22/21	
Interim Final Rule Effective Date.	03/22/21	
Final Action .....	04/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Joseph Bartels, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, *Phone:* 202-482-1595, *Email:* jbartels@doc.gov.

*RIN:* 0605-AA51

## DEPARTMENT OF COMMERCE (DOC)

### *International Trade Administration (ITA)*

#### Final Rule Stage

#### **255. • Procedures Covering Suspension of Liquidation, Duties and Estimated Duties in Accord With Presidential Proclamation 10414 [0625-AB21]**

*Legal Authority:* Proc 10414, 87 FR 35067; 19 U.S.C. 1318

*Abstract:* In accordance with Presidential Proclamation 10414 and pursuant to its authority under Section 318(a) of the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is issuing this final rule to implement Proclamation 10414. Specifically, Commerce is issuing a new rule that, in the event of an affirmative preliminary or final determination in the antidumping and countervailing duty (AD/CVD) circumvention inquiries described below, under Title VII of the Act, extends the time for, and waives, the suspension of liquidation, the application of certain AD/CVD duties, and the collection of cash deposits on applicable entries of certain crystalline silicon photovoltaic cells, whether or not assembled into modules, that are

completed in the Kingdom of Cambodia (Cambodia), Malaysia, the Kingdom of Thailand (Thailand), and the Socialist Republic of Vietnam (Vietnam) using parts and components manufactured in the People's Republic of China (China), and that are not already subject to an antidumping or countervailing duty order.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/01/22	87 FR 39426
NPRM Comment Period End.	08/01/22	
Final Action .....	09/16/22	87 FR 56868
Final Action Effective.	11/15/22	
Next Action Undetermined.	12/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Nikki Kalbing, Department of Commerce, International Trade Administration, Washington, DC 20230, *Phone:* 202-717-3147, *Email:* nikki.kalbing@trade.gov.

*RIN:* 0625-AB21

## DEPARTMENT OF COMMERCE (DOC)

### *National Oceanic and Atmospheric Administration (NOAA)*

#### Proposed Rule Stage

#### **National Marine Fisheries Service**

#### **256. International Fisheries; South Pacific Tuna Fisheries; Implementation of Amendments to the South Pacific Tuna Treaty [0648-BG04]**

*Legal Authority:* 16 U.S.C. 973 *et seq.*

*Abstract:* Under authority of the South Pacific Tuna Act of 1988, this rule would implement recent amendments to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (also known as the South Pacific Tuna Treaty). The rule would include modification to the procedures used to request licenses for U.S. vessels in the western and central Pacific Ocean purse seine fishery, including changing the annual licensing period from June-to-June to the calendar year, and modifications to existing reporting requirements for purse seine vessels fishing in the western and central Pacific Ocean. The rule would implement only those aspects of the Treaty amendments that can be implemented under the existing South Pacific Tuna Act.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Michael Tosatto, Regional Administrator, Pacific Islands Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818, *Phone:* 808 725-5000, *Email:* michael.tosatto@noaa.gov.

*RIN:* 0648-BG04

#### **257. Atlantic Highly Migratory Species; Research and Data Collection in Support of Spatial Fisheries Management [0648-BI10]**

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

*Abstract:* This rulemaking would address conducting research in areas currently closed to fishing for Atlantic highly migratory species (HMS)—during various times or by certain gear—to collect fishery-dependent data. A number of time/area closures or gear-restricted areas have been implemented over the years through various rulemakings, limiting fishing for Atlantic highly migratory species in those areas for a variety of reasons including reducing bycatch. These time/area closures have been implemented in consultation with the HMS Advisory Panel to protect species consistent with the Magnuson-Stevens Fisheries Conservation and Management Act (*e.g.*, to reduce bycatch in the pelagic longline fishery off the east coast of Florida), the Endangered Species Act (*e.g.*, to protect sea turtles in the North Atlantic), and the Atlantic Tunas Convention Act (*e.g.*, to protect spawning bluefin tuna in the Gulf of Mexico). Fishery-dependent data supports effective fisheries management, and areas that restrict fishing effort often have a commensurate decrease in fishery-dependent data collection. Programs to facilitate research and data collection, such as those that would be covered by this rulemaking, could assess the efficacy of closed areas, improve sustainable management of highly migratory species, and may provide benefits to commercial and recreational fishermen.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Kelly Denit, Director, Office of Sustainable Fisheries,

Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 13362, Silver Spring, MD 20901, Phone: 301 427-8500, Email: kelly.denit@noaa.gov.  
RIN: 0648-BL10

**258. Amendment 122 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area; Pacific Cod Trawl Cooperative Program [0648-BL08]**

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

*Abstract:* In response to a recommendation by the North Pacific Fishery Management Council, this proposed action would implement Amendment 122 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). If approved by the Secretary of Commerce and implemented by NMFS, the Pacific cod Trawl Cooperative Program (PCTC Program) would allocate quota share (QS) to groundfish License Limitation Program (LLP) license holders based on the harvest of BSAI Pacific cod during qualifying years. This Program would also allocate QS to a processor permit holder based on processing history during the qualifying years. QS allocated under this program would yield an exclusive harvest privilege to members of a PCTC Program cooperative. The Council's intent in recommending Amendment 122 is to improve the prosecution of the fishery by promoting safety and stability in the harvesting and processing sectors, increasing the value of the fishery, minimizing bycatch to the extent practicable, providing for the sustained participation of fishery dependent communities, and ensuring the sustainability and viability of the Pacific cod resource in the BSAI. The Council initiated action on this Limited Access Privilege Program (LAPP) in response to industry requests to address increasing inefficiency in the BSAI Pacific cod trawl catcher vessel sector by implementing a catch share program. Owners and operators of harvesters and processors that participate in the BSAI Pacific cod trawl fishery would be affected by this action. Section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) is the rulemaking authority. Section 303A of the MSA authorizes the creation of LAPPs.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jon Kurland, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, Phone: 907 586-7638, Email: jon.kurland@noaa.gov.  
RIN: 0648-BL08

**259. Amendment 123 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area; Halibut Abundance-Based Management of Amendment 80 Prohibited Species Catch Limit [0648-BL42]**

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

*Abstract:* In response to a recommendation by the North Pacific Fishery Management Council (Council), this proposed action would implement Amendment 123 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). If approved by the Secretary of Commerce and implemented by NMFS, this action would determine the BSAI Amendment 80 commercial groundfish trawl fleet's (A80) halibut prohibited species catch (PSC) limit annually based on the most recent values from surveys conducted by the Alaska Fisheries Science Center and the International Pacific Halibut Commission (IPHC). The Council's intent in recommending Amendment 123 is to link annual halibut PSC limits in the A80 fleet with estimated halibut abundance. The reason for the change being considered is that the current PSC limit, currently set as a fixed annual amount of 1,745 mt, becomes an increasingly larger proportion of total halibut removals in the BSAI when halibut abundance declines. Over the last 6 years, the Council and its advisory bodies, stakeholders, and the public have considered several approaches for a halibut abundance-based management (ABM) program consistent with Council fishery management objectives and the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Public testimony on this action over the years has focused on two primary concerns. The first is the importance of providing flexibility to the A80 fleet to prosecute their quotas. The second is concern about the decline in the directed halibut fishery catch as a result of a decline in halibut abundance, compounded by fixed PSC limits that further reduce the proportion of halibut available to the directed halibut fisheries.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jon Kurland, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, Phone: 907 586-7638, Email: jon.kurland@noaa.gov.  
RIN: 0648-BL42

**260. • Revisions to Federal Regulations to Economic Data Reporting Requirements for Groundfish and Crab Fisheries Off Alaska and Amendment 52 to the Fishery Management Plan for BSAI King and Tanner Crabs [0648-BL50]**

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

*Abstract:* In response to a recommendation by the North Pacific Fishery Management Council (Council), this proposed action would implement Amendment 52 to the Fishery Management Plan (FMP) for the Commercial King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) and revise Federal regulations to economic data reporting (EDR) requirements for groundfish and crab fisheries off Alaska. If approved by the Secretary of Commerce and implemented by NMFS, this action would remove third party data verification audits and blind formatting requirements for the BSAI crab fisheries EDR, the Bering Sea American Fisheries Act (AFA) pollock fishery Chinook Salmon EDR, and the BSAI Amendment 80 fisheries EDR. This action would also eliminate the EDR requirements for the Gulf of Alaska (GOA) trawl fisheries. The EDRs provide information for program evaluation and analysis of proposed conservation and management measures. The third party data verification audits and blind formatting provisions require a higher standard of confidentiality for proprietary business information than apply to all other confidential fisheries information. These provisions have proven to reduce the usability of the data for analysis and to increase the cost of the data collection programs without providing additional practical protections. The GOA Trawl EDR program, implemented in 2015, was designed to collect baseline information to assess the impacts of a future catch share program. However, no catch share program for the GOA trawl fleet has been implemented to date. The Council initiated this action to improve the usability, efficiency, and consistency of

the data collection programs and minimize cost to industry and the Federal government while still maintaining the integrity and confidentiality of the data collection program. Owners and operators of harvesters and processors in the BSAI crab fisheries, the AFA pollock fishery, the Amendment 80 fisheries, and the GOA trawl fisheries would be affected by this action. Section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act is the rulemaking authority.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/01/22	87 FR 65724
NPRM Comment Period End.	12/01/22	
Final Action .....	01/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Jon Kurland, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586-7638, *Email:* jon.kurland@noaa.gov.

*RIN:* 0648-BL50

**261. Designation of Critical Habitat for Threatened Indo-Pacific Reef-Building Corals [0648-BJ52]**

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

*Abstract:* On September 10, 2014, NMFS listed 20 species of reef-building corals as threatened under the Endangered Species Act, 15 in the Indo-Pacific and five in the Caribbean. Of the 15 Indo-Pacific species, seven occur in U.S. waters of the Pacific Islands Region, including in American Samoa, Guam, the Commonwealth of the Mariana Islands, and the Pacific Remote Island Areas. This proposed rule would designate critical habitat for the seven species in U.S. waters (*Acropora globiceps*, *Acropora jacquelineae*, *Acropora retusa*, *Acropora speciosa*, *Euphyllia paradivisa*, *Isopora crateriformis*, and *Seriatopora aculeata*). A separate proposed rule will designate critical habitat for the listed Caribbean coral species. The proposed designation may cover coral reef habitat around 13 island or atoll units in the Pacific Islands Region, including three in American Samoa, one in Guam, seven in the Commonwealth of the Mariana Islands, and two in Pacific Remote Island Areas, containing essential features that support reproduction, growth, and survival of the listed coral species. NMFS has contacted the Departments of the Navy, Air Force, and

Army as well as the U.S. Coast Guard requesting information related to potential national security impacts that may result from the critical habitat designation. Based on information provided, we will determine whether to propose to exclude any areas based on national security impacts.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/27/20	85 FR 76262
NPRM Comment Period End.	01/26/21	
NPRM Comment Period Extended.	12/23/20	85 FR 83899
NPRM Comment Period Extended End.	02/25/21	
Second NPRM Comment Period Extended.	02/09/21	86 FR 8749
Second Extended Comment Period End.	03/27/21	
Third NPRM Comment Period Extended.	03/29/21	86 FR 16325
Third NPRM Comment Period Extended End.	05/26/21	
Second NPRM ....	06/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

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

*RIN:* 0648-BJ52

**DEPARTMENT OF COMMERCE (DOC)**

National Oceanic and Atmospheric Administration (NOAA)

Final Rule Stage

**National Marine Fisheries Service**

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

*Regulatory Plan:* This entry is Seq. No. 17 in part II of this issue of the **Federal Register**.

*RIN:* 0648-BG11

**263. Regulatory Amendment to the Pacific Coast Groundfish Fishery Management Plan To Implement an Electronic Monitoring Program for Bottom Trawl and Non-Whiting Midwater Trawl Vessels [0648-BH70]**

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

*Abstract:* The proposed action would implement a regulatory amendment to the Pacific Fishery Management Council's Pacific Coast Groundfish Fishery Management Plan to allow bottom trawl and midwater trawl vessels targeting non-whiting species the option to use electronic monitoring (video cameras and associated sensors) in place of observers to meet requirements for 100-percent observer coverage. By allowing vessels the option to use electronic monitoring to meet monitoring requirements, this action is intended to increase operational flexibility and reduce monitoring costs for the fleet.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/01/22	87 FR 11382
NPRM Comment Period End.	03/31/22	
Final Action .....	10/03/22	87 FR 59705
Final Action Effective.	11/02/22	
Next Action Undetermined.	12/00/22	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Scott Rumsey, Acting Regional Administrator, West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232, *Phone:* 503 872-2791, *Email:* scott.rumsey@noaa.gov.

*RIN:* 0648-BH70

**264. Magnuson-Stevens Fisheries Conservation and Management Act; Traceability Information Program for Seafood [0648-BH87]**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*; Pub. L. 115-141

*Abstract:* On December 9, 2016, NMFS issued a final rule that established a risk-based traceability program to track seafood from harvest to entry into U.S. commerce. The final rule included, for designated priority fish species, import permitting and reporting requirements to provide for traceability of seafood products offered for entry into the U.S. supply chain, and to ensure that these products were lawfully acquired and are properly represented. Shrimp and abalone products were included in the final rule

to implement the Seafood Import Monitoring Program, but compliance with Seafood Import Monitoring Program requirements for those species was stayed indefinitely due to the disparity between Federal reporting programs for domestic aquaculture of shrimp and abalone products relative to the requirements that would apply to imports under Seafood Import Monitoring Program. In section 539 of the Consolidated Appropriations Act, 2018, Congress mandated lifting the stay on inclusion of shrimp and abalone in Seafood Import Monitoring Program and authorized the Secretary of Commerce to require comparable reporting and recordkeeping requirements for domestic aquaculture of shrimp and abalone. This rulemaking would establish permitting, reporting and recordkeeping requirements for domestic producers of shrimp and abalone from the point of production to entry into commerce.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/11/18	83 FR 51426
NPRM Comment Period End.	11/26/18	
Final Action .....	03/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Alexa Cole, Director, Office of International Affairs and Seafood Inspection, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427-8286, *Email:* alexa.cole@noaa.gov.

*RIN:* 0648-BH87

**265. Atlantic Highly Migratory Species: Amendment 13 on Bluefin Tuna Management [0648-BI08]**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*  
*Abstract:* NOAA/NMFS proposes to revise the management measures for Atlantic bluefin tuna fisheries. Potential management measures could include modifications to pelagic longline and purse seine fisheries as well as other bluefin tuna fisheries, which would increase flexibility for fishery participants.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/21/21	86 FR 27686
NPRM Comment Period End.	07/20/21	
NPRM Comment Period Extended.	07/20/21	86 FR 38262

Action	Date	FR Cite
NPRM Comment Period Extended.	09/09/21	
Final Action .....	10/03/22	87 FR 59966
Final Action Effective.	01/01/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Kelly Denit, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 13362, Silver Spring, MD 20901, *Phone:* 301 427-8500, *Email:* kelly.denit@noaa.gov.

*RIN:* 0648-BI08

**266. Amendment 23 to the Northeast Multispecies Fishery Management Plan [0648-BK17]**

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

*Abstract:* This action proposes measures recommended by the New England Fishery Management Council in Amendment 23 to the Northeast Multispecies Fishery Management Plan. The Council developed this action to implement measures to improve the reliability and accountability of catch reporting in the commercial groundfish fishery to ensure there is a precise and accurate representation of catch (landings and discards). The purpose of this action is to adjust the existing industry-funded monitoring program to improve accounting and accuracy of collected catch data. Specifically, this action would set a fixed target coverage rate as a percentage of fishing trips to replace the current annual method for calculating a coverage target. This action would exclude from the monitoring requirement all trips in geographic areas with low groundfish catch; allow for increased coverage when federal funding is available to reimburse industry's costs; set a baseline coverage target for which there is no reimbursement for industry's costs in the absence of federal funding; approve electronic monitoring technologies as an alternative to human at-sea monitors; require periodic evaluation of the monitoring program; allow for waivers from monitoring for good cause; and grant authority to the Northeast Regional Administrator to streamline industry's reporting requirements.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/28/22	87 FR 11014
NPRM Comment Period End.	03/30/22	
Final Action .....	12/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Michael Pentony, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281-9283, *Email:* michael.pentony@noaa.gov.

*RIN:* 0648-BK17

**267. • 2023–2024 Harvest Specifications and Management Measures for the Pacific Coast Groundfish Fishery [0648-BL48]**

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

*Abstract:* Every other year, the Pacific Fishery Management Council makes recommendations to set biennial allowable harvest levels for Pacific Coast groundfish, and recommends management measures for commercial, recreational, and tribal fisheries that are designed to achieve those harvest levels consistent with the Pacific Coast Groundfish Fishery Management Plan. For the 202324 biennium, the Pacific Fishery Management Council has recommended: Harvest specifications, including overfishing limits, acceptable biological catches, and annual catch limits; and Management measures to achieve those specifications. The specifications and management measures that would be forwarded by this action would be in effect from January 1, 2023, through December 31, 2024. The National Marine Fisheries Service (NMFS) would implement this rulemaking under the authority of the Magnuson Stevens Fishery Conservation and Management Act.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/14/22	87 FR 62676
NPRM Comment Period End.	11/14/22	
Final Action .....	12/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Scott Rumsey, Acting Regional Administrator, West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232, *Phone:* 503 872-2791, *Email:* scott.rumsey@noaa.gov.

*RIN:* 0648-BL48

**268. Amendment and Updates to the Pelagic Longline Take Reduction Plan [0648-BF90]**

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

*Abstract:* Serious injury and mortality of the Western North Atlantic short-



fanned pilot whale stock incidental to the Category I Atlantic pelagic longline fishery continues at levels exceeding their Potential Biological Removal. This proposed action would examine a number of management measures to amend the Pelagic Longline Take Reduction Plan to reduce the incidental mortality and serious injury of short-finned pilot whales taken in the Atlantic Pelagic Longline fishery to below Potential Biological Removal. Potential management measures may include changes to the current limitations on mainline length, new requirements to use weak hooks (hooks with reduced breaking strength), and non-regulatory measures related to determining the best procedures for safe handling and release of marine mammals. The need for the proposed action is to ensure the Pelagic Longline Take Reduction Plan meets its Marine Mammal Protection Act mandated short- and long-term goals.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/15/20	85 FR 81168
NPRM Comment Period End.	02/16/21	
Final Action .....	12/00/22	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Kim Damon-Randall, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, Phone: 301 427-8400, Email: kimberly.damon-randall@noaa.gov. RIN: 0648-BF90

**269. Designation of Critical Habitat for the Threatened Caribbean Corals [0648-BG26]**

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

*Abstract:* NMFS listed 5 Caribbean corals as threatened under the Endangered Species Act on October 10, 2014. Critical habitat shall be designated to the maximum extent prudent and determinable at the time a species is proposed for listing (50 CFR 424.12). We concluded that critical habitat was not determinable for the 5 corals at the time of listing. However, we anticipated that critical habitat would be determinable in the future given on-going research. We, therefore, announced in the final listing rules that we would propose critical habitat in separate rulemakings. This rule proposes to designate critical habitat for the 5 Caribbean coral species listed in 2014. A separate proposed critical habitat rule is being prepared for the 15 Indo-Pacific corals listed as

threatened in 2014. The proposed designation for the Caribbean corals may include marine waters in Florida, Puerto Rico, US Virgin Islands, Navassa Island, and Flower Garden Banks containing essential features that support all stages of life history of the corals. The proposed rule is not likely to have an annual effect on the economy of \$100 million or more or adversely affect the economy. NMFS has contacted the Departments of the Navy, Air Force, and Army as well as the U.S. Coast Guard requesting information related to potential national security impacts that may result from the critical habitat designation. Based on information provided, we concluded that there will be an impact on national security in only 1 area offshore Dania Beach, FL, and will propose to exclude it from the designations.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/27/20	85 FR 76302
NPRM Comment Period End.	01/26/21	
Final Rule .....	06/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Kim Damon-Randall, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, Phone: 301 427-8400, Email: kimberly.damon-randall@noaa.gov. RIN: 0648-BG26

**270. Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule [0648-BI88]**

*Regulatory Plan:* This entry is Seq. No. 18 in part II of this issue of the Federal Register.

RIN: 0648-BI88

**271. Establishment of Time-Area Closures for Hawaiian Spinner Dolphins Under the Marine Mammal Protection Act [0648-BK04]**

*Legal Authority:* 16 U.S.C. 1382 *et seq.*

*Abstract:* This rulemaking action under the Marine Mammal Protection Act (MMPA) proposes to establish mandatory time-area closures of Hawaiian spinner dolphins' essential daytime habitats at five selected sites in the Main Hawaiian Islands (MHI). In considering public comments in response to a separate proposed rule related to spinner dolphin interactions (81 FR 57854), NMFS intends these regulatory measures to prevent take of Hawaiian spinner dolphins from occurring in inshore marine areas at

essential daytime habitats, and where high levels of disturbance from human activities are most prevalent.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/28/21	86 FR 53844
NPRM Comment Period End.	12/27/21	
Final Action .....	12/00/22	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Kim Damon-Randall, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, Phone: 301 427-8400, Email: kimberly.damon-randall@noaa.gov. RIN: 0648-BK04

**DEPARTMENT OF COMMERCE (DOC)**

*National Oceanic and Atmospheric Administration (NOAA)*

Long-Term Actions

**National Marine Fisheries Service**

**272. Amendment 14 to the Fishery Management Plan for the Salmon Fisheries in the EEZ Off Alaska [0648-BK31]**

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

*Abstract:* This action would modify the Fishery Management Plan for the Salmon Fisheries in the EEZ off Alaska (FMP) and implement regulations to manage the EEZ waters of Cook Inlet under the FMP and prohibit commercial fishing for salmon in this area. Currently, this area is excluded from the FMP and the State of Alaska manages commercial fishing for salmon in this area. If approved, this action would result in all commercial salmon fishing in Cook Inlet occurring within waters of the State of Alaska under State management plans. The North Pacific Fishery Management Council (Council) determined that this action is consistent with the Council's longstanding policy to facilitate management of salmon fishing by the State of Alaska and that the State is the authority best suited for managing Alaska salmon fisheries given its existing infrastructure and expertise. The Council considered, but did not select, two other action alternatives that would delegate management of the Cook Inlet EEZ to the State of Alaska, or establish Council and NMFS management of the commercial salmon fishery within the area. The Council did not select either of these alternatives because the State of Alaska was

unwilling to accept delegation of management authority, and due to the substantial increase in management complexity and cost without corresponding benefits of both alternatives.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/04/21	86 FR 29977
NPRM Comment Period End.	07/06/21	
Final Action .....	11/03/21	86 FR 60568
Final Action Effective.	12/03/21	
Next Action Undetermined.	To Be Determined	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Jon Kurland, *Phone:* 907 586-7638, *Email:* jon.kurland@noaa.gov.

*RIN:* 0648-BK31

## DEPARTMENT OF COMMERCE (DOC)

*National Oceanic and Atmospheric Administration (NOAA)*

### Completed Actions

#### 273. Comprehensive Fishery Management Plan for Puerto Rico, Comprehensive Fishery Management Plan for St. Croix, Comprehensive Fishery Management Plan for St. Thomas/St. John [0648-BD32]

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

*Abstract:* In response to a recommendation of the Caribbean Fishery Management Council, this action would establish three new Fishery Management Plans (FMPs) (Puerto Rico FMP, St. Thomas/St. John FMP and St. Croix FMP) and repeal and replace the existing U.S. Caribbean-wide FMPs (the FMP for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (USVI), the FMP for the Spiny Lobster Fishery of Puerto Rico and the USVI, the FMP for Queen Conch Resources of Puerto Rico and the USVI, and the FMP for the Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the USVI). For each of the Puerto Rico, St. Thomas/St. John, and St. Croix FMPs, the action would also modify the composition of the stocks to be managed; organize those stocks for effective management; establish status determination criteria, management reference points, and accountability measures for managed stocks; identify essential fish habitat for stocks new to management; and establish framework measures.

*Timetable:*

Action	Date	FR Cite
Notice of Availability.	06/26/20	85 FR 38350
Comment Period End.	08/25/20	
NPRM .....	05/19/22	87 FR 30730
NPRM Comment Period End.	06/21/22	
Final Action .....	09/13/22	87 FR 56204
Final Action Effective.	10/13/22	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Andrew J. Strelcheck, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824-5305, *Email:* andy.strelcheck@noaa.gov.

*RIN:* 0648-BD32

#### 274. International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Treatment of U.S. Purse Seine Fishing With Respect to U.S. Territories [0648-BF41]

*Legal Authority:* 16 U.S.C. 6901 *et seq.*

*Abstract:* This action would establish rules and/or procedures to address the treatment of U.S.-flagged purse seine vessels and their fishing activities in regulations issued by the National Marine Fisheries Service that implement decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission), of which the United States is a member. Under the Western and Central Pacific Fisheries Convention Implementation Act, the National Marine Fisheries Service exercises broad discretion when determining how it implements Commission decisions, such as purse seine fishing restrictions. The National Marine Fisheries Service intends to examine the potential impacts of the domestic implementation of Commission decisions, such as purse seine fishing restrictions, on the economies of the U.S. territories that participate in the Commission, and examine the connectivity between the activities of U.S.-flagged purse seine fishing vessels and the economies of the territories. Based on that and other information, the National Marine Fisheries Service might propose regulations that mitigate adverse economic impacts of purse seine fishing restrictions on the U.S. territories and/or that, in the context of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the

Western and Central Pacific Ocean (Convention), recognize that one or more of the U.S. territories have their own purse seine fisheries that are distinct from the purse seine fishery of the United States and that are consequently subject to special provisions of the Convention and of Commission decisions.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	10/23/15	80 FR 64382
ANPRM Comment Period End.	11/23/15	
Withdrawn .....	09/09/22	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Michael Tosatto, Regional Administrator, Pacific Islands Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818, *Phone:* 808 725-5000, *Email:* michael.tosatto@noaa.gov.

*RIN:* 0648-BF41

#### 275. Establish National Insurance Requirements for Observer Providers [0648-BJ33]

*Legal Authority:* 16 U.S.C. 1855(d)

*Abstract:* NMFS is proposing to establish uniform, nationally applicable minimum insurance requirements for companies that provide observer or at-sea monitor services for federally managed fisheries subject to monitoring requirements. This action would supersede outdated or inappropriate regulatory insurance requirements thereby easing the regulatory and cost burden for observer/at-sea monitor providers. Additionally, this action would mitigate potential liability risks associated with observer and at-sea monitor deployments for vessel owners and shore side processors that are subject to monitoring requirements.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/22/21	86 FR 66259
NPRM Comment Period End.	01/21/22	
Final Action .....	09/08/22	87 FR 54902
Final Action Effective.	09/08/22	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Evan Howell, Director, Office of Science and Technology, National Marine Fisheries Service, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West

Highway, Silver Spring, MD 20910,  
Phone: 301 427-8100, Email:  
evan.howell@noaa.gov.  
RIN: 0648-BJ33

**276. Implementation of Resolutions C-21-04 and C-21-06 of the Inter-American Tropical Tuna Commission for Tropical Tuna and Silky Shark Conservation [0648-BK84]**

*Legal Authority:* 16 U.S.C. 951; 16 U.S.C. 952; 16 U.S.C. 953; 16 U.S.C. 954; . . .

*Abstract:* The Inter-American Tropical Tuna Commission (IATTC) is expected to adopt by consensus a Resolution for Conservation Measures for Tropical Tunas in the Eastern Pacific Ocean in October 2021. The Resolution is binding for IATTC member nations, and under the Tuna Conventions Act, 16 U.S.C. 951 *et seq.* NMFS must implement the Resolution domestically. This proposed rule would implement the provisions for tropical tuna for 2022 and beyond. In addition to rolling over measures from the 2021 Resolution, this Resolution may include an increase in purse seine closure days, changes to force majeure provisions, updates to fish aggregating device measures. The Resolution is intended to prevent overfishing of tropical tuna (bigeye, yellowfin, and skipjack) in the eastern Pacific Ocean. The following provisions that would be included in the proposed rule were also in the regulations implemented for 2021. The rule will continue to prohibit purse seine vessels of class sizes 4–6 (carrying capacity greater than 182 mt) from fishing for tropical tuna in the EPO for a period of at least 72 days. The rule would continue to require a closure of the fishery for yellowfin, bigeye, and skipjack tunas by purse-seine vessels within the area of 96W and 110W and between 4°N and 3°S from 0000 hours on 9 October to 2400 hours on 8 November. The rule would carry over all provisions included in the Measures of the Longline Fishery and Other Provisions section of the Resolution. As of August 23, 2021, 17 U.S. purse seine vessels of class size 4–6 are registered to fish in the IATTC Convention Area that would be impacted by these measures. Owners and operators of these vessels are familiar with these measures. In addition to sending professional representatives and lobbyists, many personally attended the June and August IATTC Meetings and were closely involved in briefings and discussions with State Department and NMFS leadership and staff. The action is necessary for the United States to satisfy its international obligations as a Member of the IATTC. This rule is not

expected to trigger either opposition from any sector of the public or congressional interest. This rule absorbs 0648-BK87.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/28/22	87 FR 17248
NPRM Comment Period End.	04/27/22	
Final Action .....	07/08/22	87 FR 40731
Final Action Effective.	07/25/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Scott Rumsey, Acting Regional Administrator, West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232, Phone: 503 872-2791, Email: scott.rumsey@noaa.gov.

RIN: 0648-BK84

**277. Framework Adjustment 63 to the Northeast Multispecies Fishery Management Plan [0648-BL12]**

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

*Abstract:* The action would implement management measures included in Framework Adjustment 63 to the Northeast Multispecies Fishery Management Plan (Framework 63) that were developed by the New England Fishery Management Council in response to new scientific information, pursuant to the rulemaking authorities under section 303(c) of the Magnuson-Stevens Fishery Conservation and Management Act. The action would set annual specifications for fishing years (FY) 2022–2024 for Gulf of Maine cod and Georges Bank (GB) cod, FY2022–2023 for GB yellowtail flounder, and FY2022 for white hake, and specify FY 2022 total allowable catches (TAC) for the three U.S./Canada stocks eastern GB cod, eastern GB haddock, and GB yellowtail flounder. It would also adopt additional measures to promote stock rebuilding; and develop alternatives to the current default specifications system.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/20/22	87 FR 23482
NPRM Comment Period End.	05/05/22	
Final Action .....	07/15/22	87 FR 42375
Final Action Effective.	07/15/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Michael Pentony, Regional Administrator, Greater Atlantic

Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, Phone: 978 281-9283, Email: michael.pentony@noaa.gov.  
RIN: 0648-BL12

**278. Atlantic Highly Migratory Species; Rule To Modify the Retention Limit of Shortfin Mako Sharks [0648-BL17]**

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

*Abstract:* Atlantic highly migratory species (HMS) fisheries are managed under the dual authority of the Magnuson-Stevens Conservation and Management Act and the Atlantic Tunas Convention Act (ATCA). This proposed rule would adopt management measures implementing a 2021 International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendation prohibiting retention of North Atlantic shortfin mako sharks caught in association with ICCAT fisheries in 2022. Specifically, this action would propose implementing a flexible shortfin mako shark retention limit with a default of zero in commercial and recreational HMS fisheries. This action is being taken pursuant to the rulemaking authority under the Magnuson-Stevens Fishery Conservation and Management Act, section 305(d), and ATCA.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/11/22	87 FR 21077
NPRM Comment Period End.	05/11/22	
Final Action .....	07/01/22	87 FR 39373
Final Action Effective.	07/05/22	

*Regulatory Flexibility Analysis*

*Required: Yes.*

*Agency Contact:* Kelly Denit, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 13362, Silver Spring, MD 20901, Phone: 301 427-8500, Email: kelly.denit@noaa.gov.

RIN: 0648-BL17

**279. Atlantic Large Whale Take Reduction Plan Modifications To Reduce Serious Injury and Mortality of Large Whales in Commercial Trap/Pot Fisheries Along the U.S. East Coast [0648-BJ09]**

*Legal Authority:* 16 U.S.C. 1387 *et seq.*

*Abstract:* In response to recent recommendations from the Atlantic Large Whale Take Reduction Team (TRT) to reduce the risk of North

Atlantic right whale entanglement in commercial trap/pot fisheries along the U.S. East Coast, the National Marine Fisheries Service (NMFS) intends to propose regulations to amend the Atlantic Large Whale Take Reduction Plan (Plan).

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/31/20	85 FR 86878
NPRM Comment Period End.	03/01/21	
Final Action .....	09/17/21	86 FR 51970
Final Action Effective.	10/18/21	
Final Action Correction.	03/03/22	87 FR 11978
Final Action Correction Effective.	03/03/22	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Kim Damon-Randall, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, Phone: 301 427-8400, Email: kimberly.damon-randall@noaa.gov. RIN: 0648-BJ09

**DEPARTMENT OF COMMERCE (DOC)**

*Patent and Trademark Office (PTO)*

Proposed Rule Stage

**280. • Setting and Adjusting Trademark Fees [0651-AD65]**

*Regulatory Plan:* This entry is Seq. No. 19 in part II of this issue of the Federal Register.

RIN: 0651-AD65

**DEPARTMENT OF COMMERCE (DOC)**

*Patent and Trademark Office (PTO)*

Long-Term Actions

**281. • Setting and Adjusting Patent Fees [0651-AD64]**

*Legal Authority:* Pub. L. 112-29

*Abstract:* The United States Patent and Trademark Office (USPTO or Office) takes this action to set and adjust Patent fee amounts to provide the Office with a sufficient amount of aggregate revenue to recover its aggregate cost of operations while helping the Office maintain a sustainable funding model, decrease patent pendency, and improve the reliability of issued patents.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/24	
NPRM Comment Period End.	04/00/24	
Final Action .....	10/00/24	
Final Action Effective.	12/00/24	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Brendan Hourigan, Director, Office of Planning and Budget, Department of Commerce, Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, Phone: 571 272-8966, Fax: 571 273-8966, Email: brendan.hourigan@uspto.gov. RIN: 0651-AD64

**DEPARTMENT OF COMMERCE (DOC)**

*Patent and Trademark Office (PTO)*

Completed Actions

**282. Changes To Implement Provisions of the Trademark Modernization Act of 2020 [0651-AD55]**

*Legal Authority:* 15 U.S.C. 1066; 15 U.S.C. 1067; 15 U.S.C. 1113; 15 U.S.C. 1123; 35 U.S.C. 2; Pub. L. 112-29; Pub. L. 116-260

*Abstract:* The United States Patent and Trademark Office (USPTO or Office) amends the rules of practice in trademark cases to implement provisions of the Trademark Modernization Act of 2020. The rule establishes ex parte expungement and reexamination proceedings for cancellation of a registration when the required use in commerce of the

registered mark has not been made; provides for a new nonuse ground for cancellation before the Trademark Trial and Appeal Board; establishes flexible Office action response periods; and amends the existing letter-of-protest rule to indicate that letter-of-protest determinations are final and non-reviewable. The USPTO also sets fees for petitions requesting institution of ex parte expungement and reexamination proceedings, and for requests to extend Office action response deadlines. Amendments are also for the rules concerning the suspension of USPTO proceedings and the rules governing attorney recognition in trademark matters. Finally, a new rule is to address procedures regarding court orders cancelling or affecting registrations.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/18/21	86 FR 26862
NPRM Comment Period End.	07/19/21	
Final Action .....	11/17/21	86 FR 64300
Final Action Effective.	12/18/21	
Correction; Delay of Effective Date.	10/13/22	87 FR 62032
Correction; Delay of Effective Date Effective.	10/07/23	

*Regulatory Flexibility Analysis*  
*Required:* Yes.

*Agency Contact:* Catherine Cain, Trademark Manual of Examining Procedure Editor, Department of Commerce, Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313, Phone: 571 272-8946, Fax: 751 273-8946, Email: catherine.cain@uspto.gov.

RIN: 0651-AD55

[FR Doc. 2023-02455 Filed 2-21-23; 8:45 am]

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Part V

Department of Defense

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Semiannual Regulatory Agenda

**DEPARTMENT OF DEFENSE****32 CFR Chs. I, V, VI, and VII****33 CFR Ch. II****36 CFR Ch. III****48 CFR Ch. II****Improving Government Regulations; Unified Agenda of Federal Regulatory and Deregulatory Actions****AGENCY:** Department of Defense (DoD).**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** This agenda announces the regulatory actions the Department of Defense (DoD) plans to take in the next 12 months and those regulatory actions completed since the publication of the spring 2022 Unified Agenda. It was developed under the guidelines of Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review." This agenda includes regulatory actions that support the Administration's regulatory priorities, the Secretary of Defense's top priorities to defend the Nation, take care of our people, and succeed through teamwork, as well as those priorities of the National Defense Strategy. These actions include efforts to promote the country's economic resilience, 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; support the climate change emergency; and address military family matters. Members of the public may submit comments on individual proposed and interim final rulemakings at [www.regulations.gov](http://www.regulations.gov) during the comment period that follows publication in the **Federal Register**.

This agenda updates the report published on August 8, 2022, and includes regulations expected to be issued and under review over the next 12 months. The next agenda will publish in the spring of 2023.

The complete Unified Agenda will be available online at [www.reginfo.gov](http://www.reginfo.gov).

In accordance with the Regulatory Flexibility Act (5 U.S.C. 602), which requires agencies to publish its regulatory flexibility agendas in the **Federal Register**, the Department of

Defense's printed agenda entries in the **Federal Register** include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Although printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's agenda requirements, additional information on these entries is in the Unified Agenda available online.

**FOR FURTHER INFORMATION CONTACT:**

For information concerning the overall DoD regulatory program and for general semiannual agenda information, contact Ms. Patricia Toppings, telephone 571-372-0485, or write to Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 1155 Defense Pentagon, Washington, DC 20301-1155, or email: [patricia.l.toppings.civ@mail.mil](mailto:patricia.l.toppings.civ@mail.mil).

For questions of a legal nature concerning the agenda and its statutory requirements or obligations, write to Office of the General Counsel, 1600 Defense Pentagon, Washington, DC 20301-1600, telephone 703-695-1853, or email: [gerald.j.dziecichowicz.civ@mail.mil](mailto:gerald.j.dziecichowicz.civ@mail.mil).

For general information on Office of the Secretary regulations, other than those that are procurement-related, contact Ms. Patricia Toppings, telephone 571-372-0485, or write to Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 1155 Defense Pentagon, Washington, DC 20301-1155, or email: [patricia.l.toppings.civ@mail.mil](mailto:patricia.l.toppings.civ@mail.mil).

For general information on Office of the Secretary regulations that are procurement-related, contact Ms. Jennifer Johnson, telephone 571-372-6100, or write to Office of the Under Secretary of Defense for Acquisition and Sustainment, Defense Pricing and Contracting, Defense Acquisition Regulations System, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060, or email: [jennifer.d.johnson1.civ@mail.mil](mailto:jennifer.d.johnson1.civ@mail.mil).

For general information on Department of the Army regulations, contact Mr. James "Jay" Satterwhite, telephone 571-515-0304, or write to the U.S. Army Records Management and

Declassification Agency, ATTN: AAHS-RDO, Building 1458, 9301 Chapak Road, Ft. Belvoir, VA 22060-5605, or email: [james.w.satterwhite.civ@mail.mil](mailto:james.w.satterwhite.civ@mail.mil).

For general information on the U.S. Army Corps of Engineers regulations, contact Ms. Stacey Jensen, telephone 703-695-6791, or write to Office of the Assistant Secretary of the Army (Civil Works), 108 Army Pentagon, Room 3E441, Washington, DC 20310-0108, or email: [stacey.m.jensen.civ@mail.mil](mailto:stacey.m.jensen.civ@mail.mil).

For general information on Department of the Navy regulations, contact LCDR Abigail Holt, telephone 703-614-6005, or write to Department of the Navy, Office of the Judge Advocate General, Administrative Law Division (Code 13), Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066, or email: [abigail.r.holt2.mil@us.navy.mil](mailto:abigail.r.holt2.mil@us.navy.mil).

For general information on Department of the Air Force regulations, contact Mr. Tommy Lee, telephone 703-695-6609, or write the Office of the Secretary of the Air Force, Chief, Information Dominance/Chief Information Officer (SAF CIO/A6), 1800 Air Force Pentagon, Washington, DC 20330-1800, or email: [usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil](mailto:usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil).

For specific agenda items, contact the appropriate individual indicated for each regulatory action.

**SUPPLEMENTARY INFORMATION:** This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions reports on actions planned by the Office of the Secretary of Defense, the Military Departments, the Office of the Under Secretary of Defense for Acquisition and Sustainment for procurement-related actions, and the U.S. Army Corps of Engineers.

This agenda also identifies rules impacted by the:

- a. Regulatory Flexibility Act.
- b. Paperwork Reduction Act of 1995.
- c. Unfunded Mandates Reform Act of 1995.

Generally, rules discussed in this agenda will contain five sections: (1) pre-rule stage; (2) proposed rule stage; (3) final rule stage; (4) completed actions; and (5) long-term actions. Where certain regulatory actions indicate that small entities are affected, the effect on these entities may not necessarily have significant economic impact on a substantial number of these entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)).

The publishing of this agenda does not waive the applicability of the military affairs exemption in section 553 of title 5 U.S.C. and section 3 of Executive Order 12866.

Dated: September 30, 2022.  
**Joo Y. Chung,**  
*Assistant to the Secretary of Defense for  
 Privacy, Civil Liberties, and Transparency,  
 Department of Defense.*

## OFFICE OF THE SECRETARY—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
283 .....	Cybersecurity Maturity Model Certification (CMMC) Program ( <b>Reg Plan Seq No. 21</b> ) .....	0790–AL49

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## DEFENSE ACQUISITION REGULATIONS COUNCIL—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
284 .....	Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019–D041) ( <b>Reg Plan Seq No. 24</b> ).	0750–AK81

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## OFFICE OF ASSISTANT SECRETARY FOR HEALTH AFFAIRS—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
285 .....	TRICARE Reimbursement of Ambulatory Surgery Centers and Outpatient Services Provided in Cancer and Children's Hospitals ( <b>Reg Plan Seq No. 39</b> ).	0720–AB73

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## DEPARTMENT OF DEFENSE (DOD)

*Office of the Secretary (OS)*

Proposed Rule Stage

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

*Regulatory Plan:* This entry is Seq. No. 21 in part II of this issue of the **Federal Register**.

*RIN:* 0790–AL49

## DEPARTMENT OF DEFENSE (DOD)

*Defense Acquisition Regulations Council (DARC)*

Proposed Rule Stage

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

*Regulatory Plan:* This entry is Seq. No. 24 in part II of this issue of the **Federal Register**.

*RIN:* 0750–AK81

## DEPARTMENT OF DEFENSE (DOD)

*Office of Assistant Secretary for Health Affairs (DODOASHA)*

Final Rule Stage

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

*Regulatory Plan:* This entry is Seq. No. 39 in part II of this issue of the **Federal Register**.

*RIN:* 0720–AB73

[FR Doc. 2023–02024 Filed 2–21–23; 8:45 am]

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# FEDERAL REGISTER

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Part VI

Department of Education

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Semiannual Regulatory Agenda

**DEPARTMENT OF EDUCATION****Office of the Secretary****34 CFR Subtitles A and B****Unified Agenda of Federal Regulatory and Deregulatory Actions**

**AGENCY:** Office of the Secretary, Department of Education.

**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** The Secretary of Education publishes a semiannual agenda of Federal regulatory and deregulatory actions. The agenda is issued under the authority of section 4(b) of Executive Order 12866, "Regulatory Planning and Review." The purpose of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about the regulatory actions we plan to take.

**FOR FURTHER INFORMATION CONTACT:**

Questions or comments related to specific regulations listed in this agenda should be directed to the agency contact listed for the regulations. Other questions or comments on this agenda should be directed to Leslie Carter, Program Specialist, Levon Schlichter, Attorney, or Lynn Mahaffie, Assistant General Counsel, Division of Regulatory Services, Department of Education, Room 6C128, 400 Maryland Avenue SW, Washington, DC 20202-2241; telephone: Leslie Carter (202) 401-5939, Levon Schlichter (202) 453-6387, or Lynn Mahaffie (202) 453-7862. If you are deaf, hard of hearing, or have a speech disability and wish to access

telecommunications relay services, please dial 7-1-1.

**SUPPLEMENTARY INFORMATION:** Section 4(b) of Executive Order 12866, dated September 30, 1993, requires the Department of Education (ED) to publish, at a time and in a manner specified by the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, an agenda of all regulations under development or review. The Regulatory Flexibility Act, 5 U.S.C. 602(a), requires ED to publish, in the Spring and Fall of each year, a regulatory flexibility agenda.

The regulatory flexibility agenda may be combined with any other agenda that satisfies the statutory requirements (5 U.S.C. 605(a)). In compliance with the Executive order and the Regulatory Flexibility Act, the Secretary publishes this agenda.

For each set of regulations listed, the agenda provides the title of the document, the type of document, a citation to any rulemaking or other action taken since publication of the most recent agenda, and planned dates of future rulemaking. In addition, the agenda provides the following information:

- An abstract that includes a description of the problem to be addressed, any principal alternatives being considered, and potential costs and benefits of the action.
- An indication of whether the planned action is likely to have significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601(6)).

• A reference to where a reader can find the current regulations in the Code of Federal Regulations.

- A citation of legal authority.
- The name, address, and telephone number of the contact person at ED from whom a reader can obtain additional information regarding the planned action.

In accordance with ED's Principles for Regulating listed in its regulatory plan (78 FR 1361, published January 8, 2013), ED is committed to regulations that improve the quality and equality of services it provides to its customers. ED will regulate only if absolutely necessary and then in the most flexible, most equitable, and least burdensome way possible.

Interested members of the public are invited to comment on any of the items listed in this agenda that they believe are not consistent with the Principles for Regulating. Members of the public are also invited to comment on any uncompleted actions in this agenda that ED plans to review under section 610 of the Regulatory Flexibility Act (5 U.S.C. 610) to determine their economic impact on small entities.

This publication does not impose any binding obligation on ED with regard to any specific item in the agenda. ED may elect not to pursue any of the regulatory actions listed here. Dates of future regulatory actions are subject to revision in subsequent agendas.

*Electronic Access to This Document:* The entire Unified Agenda is published electronically and is available online at [www.reginfo.gov](http://www.reginfo.gov).

**Elizabeth Brown,**  
General Counsel.

**OFFICE OF POSTSECONDARY EDUCATION—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
286 .....	Gainful Employment ( <b>Reg Plan Seq No. 45</b> ) .....	1840-AD57
287 .....	Factors of Financial Responsibility ( <b>Section 610 Review</b> ) .....	1840-AD64

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

**OFFICE OF POSTSECONDARY EDUCATION—COMPLETED ACTIONS**

Sequence No.	Title	Regulation Identifier No.
288 .....	Borrower Defense ( <b>Completion of a Section 610 Review</b> ) .....	1840-AD53
289 .....	Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10) ( <b>Completion of a Section 610 Review</b> ) .....	1840-AD55
290 .....	Pell Grants for Prison Education Programs; Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); Change in Ownership and Change in Control ( <b>Completion of a Section 610 Review</b> ) .....	1840-AD69

**DEPARTMENT OF EDUCATION (ED)***Office of Postsecondary Education (OPE)*

Proposed Rule Stage

**286. Gainful Employment [1840–AD57]**

*Regulatory Plan:* This entry is Seq. No. 45 in part II of this issue of the **Federal Register**.

*RIN:* 1840–AD57

**287. Factors of Financial Responsibility (Section 610 Review) [1840–AD64]**

*Legal Authority:* 20 U.S.C. 1094 and 1099c; sec. 4 of Pub. L. 95–452; 92 Stat. 1101–1109

*Abstract:* The Secretary plans to amend regulations in subpart L of 34 CFR part 668 on institution and program eligibility under the HEA, including regulations associated with the standards of financial responsibility an institution must maintain in order to be eligible to participate in programs under title IV of the HEA.

*Timetable:*

Action	Date	FR Cite
Notice of Intent to Commence Negotiated Rule-making.	05/26/21	86 FR 28299
NPRM .....	04/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Gregory Martin, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, Room 2C136, Washington, DC 20202, *Phone:* 202 453–7535, *Email:* gregory.martin@ed.gov.

*RIN:* 1840–AD64

**DEPARTMENT OF EDUCATION (ED)***Office of Postsecondary Education (OPE)*

Completed Actions

**288. Borrower Defense (Completion of a Section 610 Review) [1840–AD53]**

*Legal Authority:* 20 U.S.C. 1082(a)(5), (a)(6); 20 U.S.C. 1087(a); 20 U.S.C. 1087e(h); 20 U.S.C. 1221e–3; 20 U.S.C. 1226a–1; 20 U.S.C. 1234(a); 31 U.S.C. 3711

*Abstract:* The Secretary published final regulations in 34 CFR parts 30, 668, 674, 682, 685, and 686 that determine what acts or omissions of an institution of higher education a borrower may assert as a defense to repayment of a loan made under the Federal Direct Loan and Federal Family

Education Loan Programs and specify the consequences of such borrower defenses for borrowers, institutions, and the Secretary. Further, the regulations prohibit the mandatory use of class-action lawsuits and pre-dispute arbitration agreements for matters pertaining to borrower defense claims by schools receiving title IV assistance under the Higher Education Act of 1965, as amended (HEA).

*Timetable:*

Action	Date	FR Cite
Notice of Intent to Commence Negotiated Rule-making.	05/26/21	86 FR 28299
NPRM .....	07/13/22	87 FR 41878
NPRM Comment Period End.	08/12/22	
Final Action .....	11/01/22	87 FR 65904

*Regulatory Flexibility Analysis Required:* No.

*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–AD53

**289. Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10) (Completion of a Section 610 Review) [1840–AD55]**

*Legal Authority:* 20 U.S.C. 1085, 20 U.S.C. 1088; 20 U.S.C. 1091, 20 U.S.C. 1092; 20 U.S.C. 1094, 20 U.S.C. 1099a–3; 20 U.S.C. 1099c

*Abstract:* To reflect changes to the HEA made by the American Rescue Plan Act, The Secretary published final regulations that amend the Student Assistance General Provisions (34 CFR 668.28 Non-Title IV revenue) governing whether proprietary institutions meet the requirement in 34 CFR 668.14(b)(16) that institutions receive at least 10 percent of their revenue from sources other than Federal education assistance funds.

*Timetable:*

Action	Date	FR Cite
Notice of Intent to Commence Negotiated Rule-making.	10/04/21	86 FR 54666
NPRM .....	07/28/22	87 FR 45432
Merged With 1840–AD69.	09/29/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Gregory Martin, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, Room 2C136, Washington, DC 20202, *Phone:* 202 453–7535, *Email:* gregory.martin@ed.gov.

*RIN:* 1840–AD55

**290. Pell Grants for Prison Education Programs; Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); Change in Ownership and Change in Control (Completion of a Section 610 Review) [1840–AD69]**

*Legal Authority:* 20 U.S.C. 1001–1002; 20 U.S.C. 1070a, 1070a–1, 1070b, 1070c–1, 1070c–2, 1070g; 20 U.S.C. 1085, 1087aa–1087hh, 1088; 20 U.S.C. 1091; 20 U.S.C. 1094; 20 U.S.C. 1099b and 1099c; 42 U.S.C. 2753; 20 U.S.C. 1085, 20 U.S.C. 1088; 20 U.S.C. 1091, 20 U.S.C. 1092; 20 U.S.C. 1094, 20 U.S.C. 1099a–3; 20 U.S.C. 1099c; 20 U.S.C. 1091; 20 U.S.C. 1099c

*Abstract:* This action merges the following three prior RINs: RIN 1840–AD54 Pell Grants for Prison Education Programs; 1840–AD55 Determining the Amount of Federal Education Assistance Funds Received by Institutions of Higher Education (90/10); 1840–AD66 Change in Ownership and Change in Control.

For Pell Grants for Prison Education Programs, the Consolidated Appropriation Act, 2021 defines prison education programs for purposes of Pell Grant eligibility. The Secretary published final regulations regarding correctional facilities and eligible institutions of higher education seeking to establish eligibility for the Pell Grant program.

For 90/10, to reflect changes to the HEA made by the American Rescue Plan Act, the Secretary published regulations that amend the Student Assistance General Provisions (34 CFR 668.28 Non-Title IV revenue) governing whether proprietary institutions meet the requirement in 34 CFR 668.14(b)(16) that institutions receive at least 10 percent of their revenue from sources other than Federal education assistance funds.

For Changes in Ownership, the Secretary published regulations that amend provisions regulations in 34 CFR 600.31 on institution and program eligibility under the HEA, including 34 CFR 600.31, that are associated with changes in institutional ownership resulting in a change in control.

Timetable:

Action	Date	FR Cite
Notice of Intent to Commence Negotiated Rule-making.	05/26/21	86 FR 28299
NPRM .....	07/28/22	87 FR 45432
Final Action .....	10/28/22	87 FR 65426

Regulatory Flexibility Analysis  
Required: No.  
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:  
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Aaron Washington, Department of  
Education, Office of Postsecondary  
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aaron.washington@ed.gov.

RIN: 1840-AD69  
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Part VII

Department of Energy

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Semiannual Regulatory Agenda

**DEPARTMENT OF ENERGY****10 CFR Chs. II, III, and X****48 CFR Ch. 9****Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions****AGENCY:** Department of Energy.**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** The Department of Energy (DOE) has prepared and is making available its portion of the semi-annual Unified Agenda of Federal Regulatory and Deregulatory Actions (Agenda), including its Regulatory Plan (Plan), pursuant to Executive Order 12866,

“Regulatory Planning and Review,” and the Regulatory Flexibility Act.

**SUPPLEMENTARY INFORMATION:** The Agenda is a government-wide compilation of upcoming and ongoing regulatory activity, including a brief description of each rulemaking and a timetable for action. The Agenda also includes a list of regulatory actions completed since publication of the last Agenda. The Department of Energy’s portion of the Agenda includes regulatory actions called for by the Energy Policy and Conservation Act, as amended, and programmatic needs of DOE offices.

The internet is the basic means for disseminating the Agenda and

providing users the ability to obtain information from the Agenda database. DOE’s entire Fall 2022 Regulatory Agenda can be accessed online by going to [www.reginfo.gov](http://www.reginfo.gov).

Publication in the **Federal Register** is mandated by the Regulatory Flexibility Act (5 U.S.C. 602) only for Agenda entries that require either a regulatory flexibility analysis or periodic review under section 610 of that Act. The Plan appears in both the online Agenda and the **Federal Register** and includes the most important of DOE’s significant regulatory actions and a Statement of Regulatory and Deregulatory Priorities.

**Samuel Walsh,**  
*General Counsel.*

**ENERGY EFFICIENCY AND RENEWABLE ENERGY—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
291 .....	Energy Conservation Standards for Residential Conventional Cooking Products .....	1904–AD15

**ENERGY EFFICIENCY AND RENEWABLE ENERGY—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
292 .....	Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces ( <b>Reg Plan Seq No. 48</b> ).	1904–AD20
293 .....	Energy Conservation Standards for Commercial Water Heating-Equipment .....	1904–AD34
294 .....	Test Procedure for Consumer Water Heaters and Residential-Duty Commercial Water Heaters .....	1904–AE77

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

**ENERGY EFFICIENCY AND RENEWABLE ENERGY—COMPLETED ACTIONS**

Sequence No.	Title	Regulation Identifier No.
295 .....	Energy Conservation Standards for General Service Lamps .....	1904–AD09
296 .....	Test Procedure for Ceiling Fans .....	1904–AD88
297 .....	Test Procedures for Dehumidifying Direct-Expansion Dedicated Outdoor Air Systems .....	1904–AE46
298 .....	Test Procedure for Battery Chargers .....	1904–AE49
299 .....	Test Procedures for Electric Motors .....	1904–AE62
300 .....	Test Procedure for Cooking Tops .....	1904–AF18

**DEPARTMENT OF ENERGY (DOE)**

*Energy Efficiency and Renewable Energy (EE)*

Proposed Rule Stage

**291. Energy Conservation Standards for Residential Conventional Cooking Products [1904–AD15]**

*Legal Authority:* 42 U.S.C. 6295(m)(1); 42 U.S.C. 6292 (a)(10); 42 U.S.C. 6295(h)

*Abstract:* The Energy Policy and Conservation Act (EPCA), as amended by Energy Independence and Security Act of 2007 (EISA), prescribes energy conservation standards for various consumer products, including consumer conventional cooking products. EPCA also requires the U.S. Department of

Energy (DOE) to periodically determine whether more stringent standards would be technologically feasible and economically justified and would result in a significant conservation of energy. In this rulemaking, DOE is considering whether to update energy conservation standards for consumer conventional cooking products in order to fulfill its statutory deadline for amending energy conservation standards for cooking products under 42 U.S.C. 6295(m)(1). In 2020, DOE tentatively determined that amended energy conservation standards for consumer conventional cooking products would not be economically justified and would not result in significant energy savings. DOE re-evaluates this determination of whether

amending standards for cooking products would result in significant energy savings.

*Timetable:*

Action	Date	FR Cite
Request for Information (RFI).	02/12/14	79 FR 8337
RFI Comment Period End.	03/14/14	
RFI Comment Period Extended.	03/03/14	79 FR 11714
RFI Comment Period Extended End.	04/14/14	
NPRM and Public Meeting.	06/10/15	80 FR 33030



Action	Date	FR Cite
NPRM Comment Period Extended.	07/30/15	80 FR 45452
NPRM Comment Period Extended.	09/09/15	
Supplemental NPRM.	09/02/16	81 FR 60784
SNPRM Comment Period Extended.	09/30/16	81 FR 67219
SNPRM Comment Period Extended.	11/02/16	
Notice of Proposed Determination and Request for Comment.	12/14/20	85 FR 80982
Notice of Proposed Determination Comment Period End.	03/01/21	
Second SNPRM ..	01/00/23	

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Stephanie Johnson, General Engineer, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Building Technologies Office, EE5B, Washington, DC 20585, *Phone:* 202 287-1943, *Email:* stephanie.johnson@ee.doe.gov.  
*RIN:* 1904-AD15

**DEPARTMENT OF ENERGY (DOE)***Energy Efficiency and Renewable Energy (EE)*

Final Rule Stage

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

*Regulatory Plan:* This entry is Seq. No. 48 in part II of this issue of the **Federal Register**.

*RIN:* 1904-AD20**293. Energy Conservation Standards for Commercial Water Heating-Equipment [1904-AD34]**

*Legal Authority:* 42 U.S.C. 6313(a)(6)(C)(i) and (vi)

*Abstract:* The U.S. Department of Energy (DOE) is undertaking a rulemaking to amend energy conservation standards for commercial water heaters. Once completed, this rulemaking will fulfill DOE's statutory obligation under the Energy Policy and Conservation Act, as amended, (EPCA) to either propose amended energy conservation standards for commercial

water heaters and hot water supply boilers (CWHs), or determine that the existing standards do not need to be amended. (Unfired hot water storage tanks and commercial heat pump water heaters are being considered in a separate rulemaking.) DOE must determine whether national standards more stringent than those that are currently in place would result in a significant additional amount of energy savings and whether such amended national standards would be technologically feasible and economically justified. DOE proposed to amend the standards for certain classes of CWH equipment for which DOE has tentatively determined there is clear and convincing evidence to support more-stringent standards. Additionally, DOE has proposed to codify standards for electric instantaneous CWH equipment from EPCA into the Code of Federal Regulations.

*Timetable:*

Action	Date	FR Cite
Request for Information (RFI).	10/21/14	79 FR 62899
RFI Comment Period End.	11/20/14	
NPRM .....	05/31/16	81 FR 34440
NPRM Comment Period End.	08/01/16	
NPRM Comment Period Reopened.	08/05/16	81 FR 51812
NPRM Comment Period Reopened End.	08/30/16	
Notice of Data Availability (NODA).	12/23/16	81 FR 94234
NODA Comment Period End.	01/09/17	
Notice of NPRM Withdrawal.	01/15/21	86 FR 3873
NPRM .....	05/19/22	87 FR 30610
NPRM Comment Period End.	07/18/22	
NPRM Comment Period Reopened.	07/20/22	87 FR 43226
NPRM Comment Period End.	08/01/22	
Final Action .....	07/00/23	

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Julia Hegarty, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, *Phone:* 240 597-6737, *Email:* julia.hegarty@ee.doe.gov.

*RIN:* 1904-AD34**294. Test Procedure for Consumer Water Heaters and Residential-Duty Commercial Water Heaters [1904-AE77]**

*Legal Authority:* 42 U.S.C.

6293(b)(1)(A); 42 U.S.C. 6314(a)(1)

*Abstract:* Consistent with the requirements under the Energy Policy and Conservation Act (EPCA), as amended, the U.S. Department of Energy (DOE) is examining whether to amend the current test procedure for consumer water heaters and certain commercial water heaters found at 10 CFR 430, subpart B, appendix E and 10 CFR 431.106. As a result of this effort, DOE may propose and amend the test procedures for this product/equipment, or issue a determination that no amendments to the current test procedures are required.

*Timetable:*

Action	Date	FR Cite
Request for Information (RFI).	04/16/20	85 FR 21104
RFI Comment Period End.	06/01/20	
RFI Comment Period Reopened.	06/10/20	85 FR 35382
RFI Comment Period Reopened End.	06/24/20	
NPRM .....	01/11/22	87 FR 1554
NPRM; Correction	01/19/22	87 FR 2731
NPRM Comment Period End.	03/14/22	
Supplemental NPRM.	07/14/22	87 FR 42270
Supplemental NPRM Comment Period End.	08/04/22	
Final Action .....	12/00/22	

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Julia Hegarty, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, *Phone:* 240 597-6737, *Email:* julia.hegarty@ee.doe.gov.

*RIN:* 1904-AE77**DEPARTMENT OF ENERGY (DOE)***Energy Efficiency and Renewable Energy (EE)*

Completed Actions

**295. Energy Conservation Standards for General Service Lamps [1904-AD09]**

*Legal Authority:* 42 U.S.C.

6295(i)(6)(A); 42 U.S.C. 6295(i)(6)(B)

*Abstract:* Amendments to the Energy Policy and Conservation Act (EPCA) in the Energy Independence and Security Act of 2007 (EISA) direct the U.S.

Department of Energy (DOE) to conduct two rulemaking cycles to evaluate energy conservation standards for general service lamps (GSLs). EISA specifically states that the scope of the rulemaking is not limited to incandescent lamp technologies. EISA also states that DOE must consider in the first rulemaking cycle the minimum backstop requirement of 45 lumens per watt (lm/W) for GSLs effective January 1, 2020. Pursuant to this authority, in 2014, DOE initiated a rulemaking to determine whether to amend or adopt standards for GSLs. Because DOE ultimately failed to complete the first cycle of GSL rulemaking in accordance with statutory criteria, in 2022, DOE finalized a rulemaking establishing the 45 lm/W backstop requirement for GSLs. 87 FR 27439 (May 9, 2022). By completing the final backstop rule, DOE has concluded this first cycle of rulemaking. DOE is pursuing the second rulemaking cycle for GSLs under RIN 1904–AF43.

*Completed:*

Reason	Date	FR Cite
Final Rule Adopting a Definition for GSL.	05/09/22	87 FR 27461
Final Rule Adopting a Definition for GSL Effective.	07/08/22	
Final Action Backstop Requirement for GSLs.	05/09/22	87 FR 27439
Final Rule, Backstop Requirement for GSLs Effective.	07/25/22	

*Regulatory Flexibility Analysis*

*Required: Yes.*

*Agency Contact:* Stephanie Johnson,  
*Phone:* 202 287–1943, *Email:*  
*stephanie.johnson@ee.doe.gov.*  
*RIN:* 1904–AD09

**296. Test Procedure for Ceiling Fans [1904–AD88]**

*Legal Authority:* 42 U.S.C. 6293(b)(1) and (16); 42 U.S.C. 6291(49)

*Abstract:* The U.S. Department of Energy (DOE) has issued a final rule amending its test procedures for ceiling fans established under the Energy Policy and Conservation Act (EPCA), as amended. The final rule amends the test procedures for ceiling fans to include a definition for “circulating air” for the purpose of the ceiling fan definition; include ceiling fans greater than 24 feet within the scope of the test procedure; include certain belt-driven ceiling fans within the scope of the test procedure; specify that certain very small-diameter

ceiling fans are not required to be tested; maintain applicability of the standby power test procedure to large-diameter ceiling fans; specify instructions for testing ceiling fans with certain accessories or features; clarify test voltage for large-diameter ceiling fans; amend the low speed definition and increase low speed tolerance for stability criteria; permit an alternate set-up to collect air velocity test data and provide greater specificity regarding sensor orientation; amend the blade thickness measurement requirement; update instrument measurement resolution, represented values, rounding instructions, and enforcement provisions; and codify current guidance on calculating several values reported on the EnergyGuide label. The final rule also includes updated references to the industry test standard to reference the latest version.

*Completed:*

Reason	Date	FR Cite
Final Rule .....	08/16/22	87 FR 50396
Final Rule; Correction.	08/26/22	87 FR 52433
Final Rule Effective.	09/15/22	
Final Rule; Technical Amendment.	11/28/22	87 FR 72862
Final Rule; Technical Amendment Effective.	11/28/22	

*Regulatory Flexibility Analysis*

*Required: Yes.*

*Agency Contact:* Jeremy Dommu,  
*Phone:* 202 586–9870, *Email:*  
*jeremy.dommu@ee.doe.gov.*  
*RIN:* 1904–AD88

**297. Test Procedures for Dehumidifying Direct-Expansion Dedicated Outdoor Air Systems [1904–AE46]**

*Legal Authority:* 42 U.S.C. 6314(a)(4)

*Abstract:* Consistent with the requirements under the Energy Policy and Conservation Act (EPCA), as amended, the U.S. Department of Energy (DOE) has established definitions for “direct expansion-dedicated outdoor air systems” (DXDOASes) and “unitary dedicated outdoor air systems” (unitary DOASes). Unitary DOASes are a category of small, large, and very large commercial package air conditioning and heating equipment under EPCA. In addition, DOE established a test procedure to measure the energy efficiency of DXDOASes, which aligns with the most recent version of the relevant industry consensus test standards for DXDOASes, with certain minor modifications. Lastly, DOE adopted

supporting definitions, energy efficiency metrics for dehumidification and heating modes, and provisions governing public representations through a final rule.

For covered equipment addressed in the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 90.1, the DOE test procedure must be based upon the generally accepted industry testing procedure referenced in that industry consensus standard (42 U.S.C. 6314(a)(4)(A)). The statute further requires that each time the referenced industry test procedure is updated, DOE must amend the Federal test procedure to be consistent with the amended industry test procedure, unless there is clear and convincing evidence that the update would not be representative of an average use cycle or would be unduly burdensome to conduct (42 U.S.C. 6314(a)(4)(B)). Independent of that test procedure review obligation, EPCA also includes a 7-year-look-back review provision for covered commercial and industrial equipment that requires DOE to conduct an evaluation of each class of covered equipment to determine whether amended test procedures would more accurately or fully comply with the requirements that the Federal test procedure be representative of an average use cycle and not be unduly burdensome to conduct (42 U.S.C. 6314(a)(1)). In this test procedure rulemaking, DOE acted under its authority at 42 U.S.C. 6314(a)(4)(B) after determining there is clear and convincing evidence that the industry consensus standard referenced in ASHRAE Standard 90.1 (AHRI 920–2015) would not meet the requirements of 6314(a)(2). Therefore, DOE established the test procedure in alignment with the most recent version of the industry test procedure (AHRI 920–2020) which DOE determined is representative of an average use cycle and is not unduly burdensome to conduct, in accordance with 6314(a)(2). (The NOPR for this rule was mistakenly published in the **Federal Register** as RIN 1904–AD93 on July 7, 2021).

*Completed:*

Reason	Date	FR Cite
Final Action .....	07/27/22	87 FR 45164
Final Action Effective.	08/26/22	

*Regulatory Flexibility Analysis*

*Required: Yes.*

*Agency Contact:* Catherine Rivest,  
*Phone:* 202 586–7335, *Email:*  
*catherine.rivest@ee.doe.gov.*

RIN: 1904–AE46

**298. Test Procedure for Battery Chargers [1904–AE49]***Legal Authority:* 42 U.S.C. 6295(u); 42 U.S.C. 6293(b)(1)

*Abstract:* The Energy Policy and Conservation Act (EPCA), as amended, requires the U.S. Department of Energy (DOE) to consider every 7 years whether to amend test procedures for battery chargers. In making this determination, DOE must consider whether to amend its test procedures because doing so would more accurately produce test results which measure energy efficiency, or determine not to amend the test procedures. In the final rule, DOE amends the existing test procedures for battery chargers to reorganize certain subsections, clarify symbology and references, correct an incorrect cross reference and section title, update the list of battery chemistries, and terminate an existing test procedure waiver because the covered subject models have been discontinued. This final rule also establishes in new appendix Y1 a new a test procedure for battery chargers that expands coverage to include inductive wireless battery chargers and establishes associated definitions and test provisions; establishes a new test procedure approach that relies on separate metrics for active mode, standby mode, and off mode; and updates the EPS selection criteria. The new test procedure Y1 will be used for the evaluation and issuance of updated efficiency standards, as well as to determine compliance with the updated standards, should such standards be established. This rulemaking fulfills DOE's statutory obligation to either propose amended test procedures for this equipment or determine that the test procedures do not need to be amended.

*Completed:*

Reason	Date	FR Cite
Final Action .....	09/08/22	87 FR 55090
Final Action; Correction.	10/07/22	87 FR 60867
Final Action Effective.	10/11/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jeremy Dommu, Phone: 202 586–9870, Email: jeremy.dommu@ee.doe.gov.

RIN: 1904–AE49

**299. Test Procedures for Electric Motors [1904–AE62]***Legal Authority:* 42 U.S.C. 6311(1)(A); 42 U.S.C. 6314(a)(1)

*Abstract:* The Energy Policy and Conservation Act (EPCA), as amended, requires the U.S. Department of Energy (DOE) to amend the test procedures with respect to electric motors at least once every 7 years, if it determines that amended test procedures would more accurately produce test results measuring the energy efficiency of electric motors, or make a determination not to amend the test procedures. The final rule amends the existing scope of the test procedures for electric motors consistent with related updates to the relevant industry testing standard (*i.e.*, for air-over electric motors, electric motors greater than 500 horsepower, electric motors considered small, inverter-only electric motors, and synchronous electric motors); adds test procedures, an appropriate metric, and supporting definitions for additional electric motors covered under the amended scope; and updates references to industry standards to reference current versions. Furthermore, DOE is adopting certain industry provisions related to the prescribed test conditions to further ensure the comparability of test results. DOE is also amending provisions pertaining to certification testing and the determination of represented values for electric motors other than dedicated-purpose pool pump motors, and re-locating such provisions consistent with the location of the certification requirements for other covered products and equipment. Finally, DOE is adding provisions pertaining to certification testing and the determination of represented values for dedicated-purpose pool pump motors. Now completed, this rulemaking fulfills DOE's statutory obligation to either propose an amended test procedure or determine that the existing test procedure does not need to be amended.

*Completed:*

Reason	Date	FR Cite
Final Action .....	10/19/22	87 FR 63588
Final Action; Correction.	10/26/22	87 FR 64689
Final Action Effective.	11/18/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jeremy Dommu, Phone: 202 586–9870, Email: jeremy.dommu@ee.doe.gov.

RIN: 1904–AE62

**300. Test Procedure for Cooking Tops [1904–AF18]***Legal Authority:* 42 U.S.C. 6293(b)(1); 42 U.S.C. 6292(a)(10)

*Abstract:* The U.S. Department of Energy (DOE) is required to review its test procedures for cooking products, including conventional cooking tops, once every 7 years under the Energy Policy and Conservation Act (EPCA), as amended. In this rulemaking, DOE has established a test procedure for conventional cooking tops, a category of cooking products, under a new appendix. The new test procedure adopts the latest version of the relevant industry standard for electric cooking tops with modifications. The modifications adapt the test method to gas cooking tops, normalize the energy use of each test cycle, include measurement of standby mode and off mode energy use, update certain test conditions, and clarify certain provisions. This final rule retitles the existing cooking products test procedure to specify that it is for microwave ovens only. Through this final rule, DOE fulfills its statutory obligation to either propose new test procedures for this product or determine that new test procedures are not required. This review also satisfies the review requirement under Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," 86 FR 7037 (January 25, 2021).

*Completed:*

Reason	Date	FR Cite
Final Action .....	08/22/22	87 FR 51492
Final Action Effective.	09/21/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Stephanie Johnson, Phone: 202 287–1943, Email: stephanie.johnson@ee.doe.gov.

RIN: 1904–AF18

[FR Doc. 2023–02270 Filed 2–21–23; 8:45 am]

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Part VIII

Department of Health and Human Services

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Semiannual Regulatory Agenda

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Office of the Secretary****21 CFR Ch. I****25 CFR Ch. V****42 CFR Chs. I–V****45 CFR Subtitle A; Subtitle B, Chs. II, III, and XIII****Regulatory Agenda****AGENCY:** Office of the Secretary, HHS.**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** The Regulatory Flexibility Act of 1980 and Executive Order (E.O.) 12866 require the semiannual issuance of an inventory of rulemaking actions under development throughout the Department, offering for public review

summarized information about forthcoming regulatory actions.

**FOR FURTHER INFORMATION CONTACT:**

Elizabeth J. Gramling, Executive Secretary, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201; (202) 690–5627.

**SUPPLEMENTARY INFORMATION:** The Department of Health and Human Services (HHS) is the Federal government's lead agency for protecting the health of all Americans and providing essential human services. HHS enhances the health and well-being of Americans by promoting effective health and human services and by fostering sound, sustained advances in the sciences underlying medicine, public health, and social services.

This Agenda presents the regulatory activities that the Department expects to undertake in the foreseeable future to advance this mission. The purpose of the Agenda is to encourage more

effective public participation in the regulatory process. The regulatory actions forecasted in this Agenda reflect the priorities of HHS Secretary Xavier Becerra and the Biden-Harris Administration. Accordingly, this Agenda contains rulemakings aimed at 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, among other policy priorities.

The rulemaking abstracts included in this paper issue of the **Federal Register** cover, as required by the Regulatory Flexibility Act of 1980, those prospective HHS rulemakings likely to have a significant economic impact on a substantial number of small entities. The Department's complete Regulatory Agenda is accessible online at <http://www.RegInfo.gov>.

**Elizabeth J. Gramling,**  
HHS Executive Secretary.

**OFFICE OF THE SECRETARY—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
301 .....	Limiting the Effect of Exclusions Implemented Under the Social Security Act ( <b>Rulemaking Resulting From a Section 610 Review</b> ).	0991–AC11

**SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
302 .....	Medications for the Treatment of Opioid Use Disorder ( <b>Reg Plan Seq No. 56</b> ) .....	0930–AA39

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

**CENTERS FOR DISEASE CONTROL AND PREVENTION—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
303 .....	Control of Communicable Diseases; Foreign Quarantine ( <b>Reg Plan Seq No. 57</b> ) .....	0920–AA75

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

**FOOD AND DRUG ADMINISTRATION—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
304 .....	Medication Guide; Patient Medication Information .....	0910–AH68
305 .....	Requirements for Tobacco Product Manufacturing Practice .....	0910–AH91
306 .....	Administrative Detention of Tobacco Products .....	0910–AI05
307 .....	Nutrient Content Claims, Definition of Term: Healthy .....	0910–AI13
308 .....	Conduct of Analytical and Clinical Pharmacology, Bioavailability and Bioequivalence Studies .....	0910–AI57
309 .....	Amendments to the Final Rule Regarding the List of Bulk Substances That Can Be Used to Compound Drug Products in Accordance With Section 503A of the Federal Food, Drug, and Cosmetic Act ( <b>Section 610 Review</b> ).	0910–AI70
310 .....	Distribution of Compounded Drug Products Under Section 503A of the Federal Food, Drug, and Cosmetic Act ( <b>Section 610 Review</b> ).	0910–AI71

## FOOD AND DRUG ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
311 .....	Direct-to-Consumer Prescription Drug Advertisements: Presentation of the Major Statement in a Clear, Conspicuous, Neutral Manner in Advertisements in Television and Radio Format.	0910–AG27
312 .....	Sunlamp Products; Amendment to the Performance Standard .....	0910–AG30
313 .....	Mammography Quality Standards Act ( <b>Reg Plan Seq No. 63</b> ) .....	0910–AH04
314 .....	General and Plastic Surgery Devices: Restricted Sale, Distribution, and Use of Sunlamp Products .....	0910–AH14
315 .....	Amendments to the List of Bulk Drug Substances That Can Be Used To Compound Drug Products in Accordance With Section 503A of the Federal Food, Drug, and Cosmetic Act.	0910–AH81
316 .....	Revocation of Uses of Partially Hydrogenated Oils in Foods .....	0910–AI15
317 .....	Tobacco Product Standard for Characterizing Flavors in Cigars ( <b>Reg Plan Seq No. 65</b> ) .....	0910–AI28
318 .....	Tobacco Product Standard for Menthol in Cigarettes ( <b>Reg Plan Seq No. 67</b> ) .....	0910–AI60

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## FOOD AND DRUG ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
319 .....	National Standards for the Licensure of Wholesale Drug Distributors and Third-Party Logistics Providers ..	0910–AH11
320 .....	Nicotine Toxicity Warnings .....	0910–AH24
321 .....	Certain Requirements Regarding Prescription Drug Marketing (203 Amendment) .....	0910–AH56
322 .....	Postmarketing Safety Reporting Requirements, Pharmacovigilance Plans, and Pharmacovigilance Quality Systems for Human Drug and Biological Products.	0910–AI61

## FOOD AND DRUG ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
323 .....	Requirements For Additional Traceability Records For Certain Foods .....	0910–AI44

## CENTERS FOR MEDICARE &amp; MEDICAID SERVICES—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
324 .....	Medicare Advantage and Medicare Prescription Drug Benefit Program Payment Policy (CMS–4198) .....	0938–AU59
325 .....	Transitional Coverage for Emerging Technologies (CMS–3421) ( <b>Reg Plan Seq No. 71</b> ) .....	0938–AU86
326 .....	CY 2024 Revisions to Payment Policies under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS–1784) ( <b>Section 610 Review</b> ).	0938–AV07
327 .....	Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2024 Rates (CMS–1785) ( <b>Section 610 Review</b> ).	0938–AV08
328 .....	CY 2024 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS–1786) ( <b>Section 610 Review</b> ).	0938–AV09

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## CENTERS FOR MEDICARE &amp; MEDICAID SERVICES—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
329 .....	Omnibus COVID–19 Health Care Staff Vaccination (CMS–3415) ( <b>Section 610 Review</b> ) .....	0938–AU75

## CENTERS FOR MEDICARE &amp; MEDICAID SERVICES—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
330 .....	CY 2023 Home Health Prospective Payment System Rate Update and Home Infusion Therapy Services Payment Update (CMS–1766) ( <b>Completion of a Section 610 Review</b> ).	0938–AU77
331 .....	CY 2023 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System and Quality Incentive Program (CMS–1768) ( <b>Completion of a Section 610 Review</b> ).	0938–AU79
332 .....	FY 2023 Inpatient Psychiatric Facilities Prospective Payment System Rate (CMS–1769) ( <b>Completion of a Section 610 Review</b> ).	0938–AU80
333 .....	CY 2023 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS–1770) ( <b>Completion of a Section 610 Review</b> ).	0938–AU81



## CENTERS FOR MEDICARE &amp; MEDICAID SERVICES—COMPLETED ACTIONS—Continued

Sequence No.	Title	Regulation Identifier No.
334 .....	Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2023 Rates (CMS-1771) ( <b>Completion of a Section 610 Review</b> ).	0938-AU84

**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)***Office of the Secretary (OS)*

Proposed Rule Stage

**301. Limiting the Effect of Exclusions Implemented Under the Social Security Act (Rulemaking Resulting From a Section 610 Review) [0991-AC11]***Legal Authority:* 5 U.S.C. 301; 31 U.S.C. 6101

*Abstract:* HHS proposes to remove the regulatory provisions at issue, in order to align the regulation with the intent of the Social Security Act and current practice. Exclusions implemented under the Social Security Act prevent individuals convicted of certain crimes or individuals whose health care licenses have been revoked from participating in federal healthcare programs. Instead of only being barred from participating in all federal healthcare programs, certain regulatory provisions have resulted in these type of exclusion actions being given an overly broad government-wide effect, and excluded parties have been barred from participating in all Federal procurement and non-procurement actions. However, because Social Security Act exclusions are not issued under an agency's suspension and debarment authority, they do not stop individuals from participating in all federal procurement and non-procurement actions. For an agency to bar individuals from participating in all procurement and non-procurement activities, it must exercise its suspension and debarment authority under the Federal Acquisition Regulation or the Nonprocurement Common Rule.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/22	

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Tiffani Redding, Program Analyst, Department of Health and Human Services, Office of the Secretary, 200 Independence Avenue SW, Washington, DC 20201, *Phone:* 202 768-0628, *Email:* tiffani.redding@hhs.gov.

*RIN:* 0991-AC11**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)***Substance Abuse and Mental Health Services Administration (SAMHSA)*

Proposed Rule Stage

**302. Medications for the Treatment of Opioid Use Disorder [0930-AA39]**

*Regulatory Plan:* This entry is Seq. No. 56 in part II of this issue of the **Federal Register**.

*RIN:* 0930-AA39**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)***Centers for Disease Control and Prevention (CDC)*

Final Rule Stage

**303. Control of Communicable Diseases; Foreign Quarantine [0920-AA75]**

*Regulatory Plan:* This entry is Seq. No. 57 in part II of this issue of the **Federal Register**.

*RIN:* 0920-AA75**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)***Food and Drug Administration (FDA)*

Proposed Rule Stage

**304. Medication Guide; Patient Medication Information [0910-AH68]**

*Legal Authority:* 21 U.S.C. 321 *et seq.*; 42 U.S.C. 262; 42 U.S.C. 264; 21 U.S.C. 371

*Abstract:* The proposed rule would amend FDA medication guide regulations to require a new form of patient labeling. Patient Medication Information, for submission to and review by FDA for human prescription drug products and certain blood products used, dispensed, or administered on an outpatient basis. The proposed rule would include requirements for Patient Medication Information development and distribution. The proposed rule would require clear and concisely written prescription drug product information presented in a consistent and easily understood format to help patients use

their prescription drug products safely and effectively.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Chris Wheeler, Supervisory Project Manager, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Building 51, Room 3330, Silver Spring, MD 20993, *Phone:* 301 796-0151, *Email:* chris.wheeler@fda.hhs.gov. *RIN:* 0910-AH68

**305. Requirements for Tobacco Product Manufacturing Practice [0910-AH91]**

*Legal Authority:* 21 U.S.C. 371; 21 U.S.C. 387b; 21 U.S.C. 387f

*Abstract:* The rule is proposing to establish tobacco product manufacturing practice (TPMP) requirements for manufacturers of finished and bulk tobacco products. This proposed rule, if finalized, would set forth requirements for the manufacture, pre-production design validation, packing, and storage of a tobacco product. This proposal would help prevent the manufacture and distribution of contaminated and otherwise nonconforming tobacco products. This proposed rule provides manufacturers with flexibility in the manner in which they comply with the proposed requirements while giving FDA the ability to enforce regulatory requirements, thus helping to assure the protection of public health.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Matthew Brenner, Senior Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Tobacco Products, 10903 New Hampshire Avenue, Document Control Center, Building 71, Room G335, Silver Spring, MD 20993, *Phone:* 877 287-

1373, Email: [ctpregulations@fda.hhs.gov](mailto:ctpregulations@fda.hhs.gov).

RIN: 0910-AH91

### 306. Administrative Detention of Tobacco Products [0910-AI05]

*Legal Authority:* 21 U.S.C. 334; 21 U.S.C. 371

*Abstract:* FDA is proposing a regulation to establish requirements for the administrative detention of tobacco products. This proposed rule, when finalized, would allow FDA to administratively detain tobacco products encountered during inspections of manufacturers or other establishments that manufacture, process, pack, or hold tobacco products that an authorized FDA representative conducting the inspection has reason to believe are adulterated or misbranded. The intent of administrative detention is to protect public health by preventing the distribution or use of tobacco products encountered during inspections that are believed to be adulterated or misbranded until FDA has had time to consider the appropriate action to take and, where appropriate, to initiate legal action.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

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

Laura Chilaka, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Tobacco Products, 10903 New Hampshire Avenue, Document Control Center, Building 71, Room G335, Silver Spring, MD 20993, Phone: 877 287-1373, Email: [ctpregulations@fda.hhs.gov](mailto:ctpregulations@fda.hhs.gov).

RIN: 0910-AI05

### 307. Nutrient Content Claims, Definition of Term: Healthy [0910-AI13]

*Legal Authority:* 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 343; 21 U.S.C. 371

*Abstract:* The proposed rule would update the definition for the implied nutrient content claim “healthy” to be consistent with current nutrition science and federal dietary guidelines.

The proposed rule would revise the requirements for when the claim “healthy” can be voluntarily used in the labeling of human food products to indicate that a food, because of its nutrient content, may be useful in achieving a total diet that conforms to current dietary recommendations and helps consumers maintain healthy dietary practices.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/29/22	87 FR 59168
NPRM Comment Period End.	12/28/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Vincent De Jesus, Nutritionist, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition, (HFS-830), Room 3D-031, 5100 Paint Branch Parkway, College Park, MD 20740, Phone: 240 402-1774, Fax: 301 436-1191, Email: [vincent.dejesus@fda.hhs.gov](mailto:vincent.dejesus@fda.hhs.gov).

RIN: 0910-AI13

### 308. Conduct of Analytical and Clinical Pharmacology, Bioavailability and Bioequivalence Studies [0910-AI57]

*Legal Authority:* 21 U.S.C. 355; 21 U.S.C. 371; 21 U.S.C. 374; 42 U.S.C. 262

*Abstract:* FDA is proposing to amend 21 CFR 320, in certain parts, and establish a new 21 CFR 321 to clarify FDA’s study conduct expectations for clinical pharmacology, and clinical and analytical bioavailability (BA) and bioequivalence (BE) studies that support marketing applications for human drug and biological products. The proposed rule would specify needed basic study conduct requirements to enable FDA to ensure those studies are conducted appropriately and to verify the reliability of study data from those studies. This regulation would align with FDA’s other good practice regulations, would also be consistent with current industry best practices, and would harmonize the regulations more closely with related international regulatory expectations.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Brian Joseph Folian, Supervisory Biologist, Department of Health and Human Services, Food and Drug Administration, 10903 New

Hampshire Avenue, Building 51, Room 5215, Silver Spring, MD 20993-0002, Phone: 240 402-4089, Email: [brian.folian@fda.hhs.gov](mailto:brian.folian@fda.hhs.gov).

RIN: 0910-AI57

### 309. Amendments to the Final Rule Regarding the List of Bulk Substances That Can Be Used To Compound Drug Products in Accordance With Section 503A of the Federal Food, Drug, and Cosmetic Act (Section 610 Review) [0910-AI70]

*Legal Authority:* 21 U.S.C. 353a; 21 U.S.C. 351; 21 U.S.C. 371(a); 21 U.S.C. 352; 21 U.S.C. 355

*Abstract:* FDA has issued a regulation creating a list of bulk drug substances (active pharmaceutical ingredients) that can be used to compound drug products in accordance with section 503A of the Federal Food, Drug, and Cosmetic Act (FD&C Act), although they are neither the subject of an applicable United States Pharmacopeia (USP) or National Formulary (NF) monograph nor components of FDA-approved drug products (the 503A Bulks List). The proposed rule will identify certain bulk drug substances that FDA has considered and is proposing to place on the 503A Bulks List and certain bulk drug substances that FDA has considered and is proposing not to include on the 503A Bulks List.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Rosilend Lawson, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Building 51, Room 5197, Silver Spring, MD 20993, Phone: 240 402-6223, Email: [rosilend.lawson@fda.hhs.gov](mailto:rosilend.lawson@fda.hhs.gov).

RIN: 0910-AI70

### 310. Distribution of Compounded Drug Products Under Section 503A of the Federal Food, Drug, and Cosmetic Act (Section 610 Review) [0910-AI71]

*Legal Authority:* 21 U.S.C. 351; 21 U.S.C. 352; 21 U.S.C. 353a; 21 U.S.C. 353a-1; 21 U.S.C. 355; 21 U.S.C. 371

*Abstract:* The Food and Drug Administration is proposing rulemaking regarding statutory requirements under section 503A of the Federal Food, Drug, and Cosmetic Act for certain distributions of compounded human drug products. The proposed rule, if finalized, will include provisions regarding a standard memorandum of

understanding (MOU) that describes the responsibilities of a State Board of Pharmacy or other appropriate State agency that chooses to sign the standard MOU in investigating complaints related to drug products compounded in such State and distributed outside such State and in addressing the interstate distribution of inordinate amounts of compounded human drug products. It will also, if finalized, include provisions regarding the statutory 5 percent limit on distribution of compounded human drug products out of the State in which they are compounded in States that do not sign the standard MOU. The rule, will also, if finalized, address communication with State boards pharmacy.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/00/23	

*Regulatory Flexibility Analysis*

*Required:* Undetermined.

*Agency Contact:* Dominic Markwordt, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Avenue, Building 51, Room 5104, Silver Spring, MD 20993, *Phone:* 301 796-9349, *Email:* dominic.markwordt@fda.hhs.gov.  
*RIN:* 0910-A171

## DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

### Food and Drug Administration (FDA)

Final Rule Stage

#### 311. Direct-to-Consumer Prescription Drug Advertisements: Presentation of the Major Statement in a Clear, Conspicuous, Neutral Manner in Advertisements in Television and Radio Format [0910-AG27]

*Legal Authority:* 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 352; 21 U.S.C. 355; 21 U.S.C. 360b; 21 U.S.C. 371; . . .

*Abstract:* The Food and Drug Administration (FDA) is amending its regulations concerning direct-to-consumer (DTC) advertisements of prescription drugs. Prescription drug advertisements presented through media such as TV and radio must disclose the product's major side effects and contraindications in what is sometimes called the major statement. The rule would revise the regulation to reflect the statutory requirement that in DTC advertisements for human drugs in television or radio format, the major statement relating to side effects and

contraindications of an advertised prescription drug must be presented in a clear, conspicuous, and neutral manner. This rule also establishes standards for determining whether the major statement in these advertisements is presented in the manner required.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/29/10	75 FR 15376
NPRM Comment Period End.	06/28/10	
NPRM Comment Period Re-opened.	01/27/12	77 FR 4273
NPRM Comment Period End.	02/27/12	
NPRM Comment Period Re-opened.	03/29/12	77 FR 16973
NPRM Comment Period Re-opened End.	04/09/12	
Final Rule .....	05/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Suzanna Boyle, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, WO 51, Room 3214, Silver Spring, MD 20993, *Phone:* 240 402-4723, *Email:* suzanna.boyle@fda.hhs.gov.

*RIN:* 0910-AG27

#### 312. Sunlamp Products; Amendment to the Performance Standard [0910-AG30]

*Legal Authority:* 21 U.S.C. 360ii; 21 U.S.C. 360kk; 21 U.S.C. 393; 21 U.S.C. 371

*Abstract:* FDA is updating the performance standard for sunlamp products and ultraviolet lamps for use in these products to improve safety, reflect new scientific information, and work towards harmonization with international standards. By harmonizing with the International Electrotechnical Commission, this rule will decrease the regulatory burden on industry and allow the Agency to take advantage of the expertise of the international committees, thereby also saving resources.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/22/15	80 FR 79505
NPRM Comment Period End.	03/21/16	
Final Rule .....	06/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Ian Ostermiller, Regulatory Counsel, Center for Devices

and Radiological Health, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, WO 66, Room 5454, Silver Spring, MD 20993, *Phone:* 301-796-5678, *Email:* ian.ostermiller@fda.hhs.gov.

*RIN:* 0910-AG30

#### 313. Mammography Quality Standards Act [0910-AH04]

*Regulatory Plan:* This entry is Seq. No. 63 in part II of this issue of the **Federal Register**.

*RIN:* 0910-AH04

#### 314. General and Plastic Surgery Devices: Restricted Sale, Distribution, And Use of Sunlamp Products [0910-AH14]

*Legal Authority:* 21 U.S.C. 360j(e)

*Abstract:* This rule will apply device restrictions to sunlamp products. Sunlamp products include ultraviolet (UV) lamps and UV tanning beds and booths. The incidence of skin cancer, including melanoma, has been increasing, and a large number of skin cancer cases are attributable to the use of sunlamp products. The devices may cause about 400,000 cases of skin cancer per year, and 6,000 of which are melanoma. Beginning use of sunlamp products at young ages, as well as frequently using sunlamp products, both increases the risk of developing skin cancers and other illnesses, and sustaining other injuries. Even infrequent use, particularly at younger ages, can significantly increase these risks.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/22/15	80 FR 79493
NPRM Comment Period End.	03/21/16	
Final Rule .....	06/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Ian Ostermiller, Regulatory Counsel, Center for Devices and Radiological Health, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, WO 66, Room 5454, Silver Spring, MD 20993, *Phone:* 301-796-5678, *Email:* ian.ostermiller@fda.hhs.gov.

*RIN:* 0910-AH14

### 315. Amendments to the List of Bulk Drug Substances That Can Be Used To Compound Drug Products in Accordance With Section 503A of the Federal Food, Drug, and Cosmetic Act [0910-AH81]

**Legal Authority:** 21 U.S.C. 351; 21 U.S.C. 352; 21 U.S.C. 353a; 21 U.S.C. 355; 21 U.S.C. 371

**Abstract:** FDA has issued a regulation creating a list of bulk drug substances (active pharmaceutical ingredients) that can be used to compound drug products in accordance with section 503A of the Federal Food, Drug, and Cosmetic Act (FD&C Act), although they are neither the subject of an applicable United States Pharmacopeia (USP) or National Formulary (NF) monograph nor components of FDA-approved drugs (the 503A Bulks List). FDA has proposed to amend the 503A Bulks List by placing five additional bulk drug substances on the list. FDA has also identified 26 bulk drug substances that FDA has considered and proposed not to include on the 503A Bulks List. Additional substances nominated by the public for inclusion on this list are currently under consideration and will be the subject of a future rulemaking.

#### Timetable:

Action	Date	FR Cite
NPRM .....	09/05/19	84 FR 46688
NPRM Comment Period End.	12/04/19	
Final Rule .....	10/00/23	

**Regulatory Flexibility Analysis Required:** Yes.

**Agency Contact:** Rosilend Lawson, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Building 51, Room 5197, Silver Spring, MD 20993, *Phone:* 240-402-6223, *Email:* [rosilend.lawson@fda.hhs.gov](mailto:rosilend.lawson@fda.hhs.gov)

**RIN:** 0910-AH81

### 316. Revocation of Uses of Partially Hydrogenated Oils in Foods [0910-AI15]

**Legal Authority:** 21 U.S.C. 321; 21 U.S.C. 341; 21 U.S.C. 342; 21 U.S.C. 343; 21 U.S.C. 348; 21 U.S.C. 371; 21 U.S.C. 379e

**Abstract:** In the **Federal Register** of June 17, 2015 (80 FR 34650), we published a declaratory order announcing our final determination that there is no longer a consensus among qualified experts that partially hydrogenated oils (PHOs) are generally recognized as safe (GRAS) for any use in human food. In the **Federal Register** of May 21, 2018 (83 FR 23382), we denied

a food additive petition requesting that the food additive regulations be amended to provide for the safe use of PHOs in certain food applications. We are now planning to issue a direct final rule and companion proposed rule to update our regulations to remove all mention of partially hydrogenated oils from FDA's GRAS regulations and as an optional ingredient in standards of identity. We are also revoking all prior sanctions for uses of PHOs in food.

#### Timetable:

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

**Regulatory Flexibility Analysis Required:** Yes.

**Agency Contact:** Ellen Anderson, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, HFS-265, 4300 River Road, College Park, MD 20740, *Phone:* 240-402-1309, *Email:* [ellen.anderson@fda.hhs.gov](mailto:ellen.anderson@fda.hhs.gov)

**RIN:** 0910-AI15

### 317. Tobacco Product Standard for Characterizing Flavors in Cigars [0910-AI28]

**Regulatory Plan:** This entry is Seq. No. 65 in part II of this issue of the **Federal Register**.

**RIN:** 0910-AI28

### 318. Tobacco Product Standard for Menthol in Cigarettes [0910-AI60]

**Regulatory Plan:** This entry is Seq. No. 67 in part II of this issue of the **Federal Register**.

**RIN:** 0910-AI60

## DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

### Food and Drug Administration (FDA)

#### Long-Term Actions

### 319. National Standards for the Licensure of Wholesale Drug Distributors and Third-Party Logistics Providers [0910-AH11]

**Legal Authority:** Secs. 583 and 584 of the FD&C Act, as added by the DSCSA under Pub. L. 113-54, together with related FD&C Act authority added by the DSCSA

**Abstract:** The final rule establishes national standards for State licensing of prescription drug wholesale distributors and third-party logistics providers. The rulemaking also establishes a Federal system for wholesale drug distributor and third-party logistics provider licensing for use in the absence of a State licensure program.

#### Timetable:

Action	Date	FR Cite
NPRM .....	02/04/22	87 FR 6708
NPRM Comment Period End.	06/06/22	
NPRM Comment Period Extended.	05/24/22	87 FR 31439
NPRM Comment Period Extended End.	09/06/22	
Final Rule .....	04/00/25	

**Regulatory Flexibility Analysis Required:** Yes.

**Agency Contact:** Aaron Weisbuch, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Building 51, Room 4261, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301-796-9362, *Email:* [aaron.weisbuch@fda.hhs.gov](mailto:aaron.weisbuch@fda.hhs.gov)

**RIN:** 0910-AH11

### 320. Nicotine Toxicity Warnings [0910-AH24]

**Legal Authority:** 21 U.S.C. 301 *et seq.*; 21 U.S.C. 331; 21 U.S.C. 371; 21 U.S.C. 387f; . . .

**Abstract:** This rule would establish acute nicotine toxicity warning requirements for liquid nicotine and nicotine-containing e-liquid(s) intended for human consumption, and potentially for other tobacco products including, but not limited to, novel tobacco products such as dissolvables, lotions, gels, and drinks. This action is intended to increase consumer awareness and knowledge of the risks of acute toxicity due to accidental nicotine exposure from nicotine-containing e-liquids in tobacco products.

#### Timetable:

Action	Date	FR Cite
NPRM .....	04/00/24	

**Regulatory Flexibility Analysis Required:** Yes.

**Agency Contact:** Laura Chilaka, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Tobacco Products, 10903 New Hampshire Avenue, Document Control Center, Building 71, Room G355, Silver Spring, MD 20993, *Phone:* 877-287-1373, *Email:* [ctpregulations@fda.hhs.gov](mailto:ctpregulations@fda.hhs.gov)

**RIN:** 0910-AH24

**321. Certain Requirements Regarding Prescription Drug Marketing (203 Amendment) [0910-AH56]**

*Legal Authority:* Section 503 and related provisions of the FD&C Act, as amended by Pub. L. 113-54

*Abstract:* The final rule amends Food and Drug Administration (FDA) regulations at 21 CFR 203 to remove provisions no longer in effect and incorporate conforming changes following enactment of the Drug Supply Chain Security Act (DSCSA). The final rule amends the regulations to clarify provisions and avoid causing confusion with the new standards for wholesale distribution established by DSCSA.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/04/22	87 FR 6443
NPRM Comment Period End.	04/05/22	
Final Rule .....	04/00/25	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Aaron Weisbuch, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Building 51, Room 4261, 10903 New Hampshire Avenue, Silver Spring, MD 20993, Phone: 301-796-9362, Email: aaron.weisbuch@fda.hhs.gov.

RIN: 0910-AH56

**322. Postmarketing Safety Reporting Requirements, Pharmacovigilance Plans, and Pharmacovigilance Quality Systems for Human Drug and Biological Products [0910-AI61]**

*Legal Authority:* 42 U.S.C. 262; 42 U.S.C. 264; 42 U.S.C. 300aa-25; 21 U.S.C. 321; 21 U.S.C. 351 to 353; 21 U.S.C. 355; 21 U.S.C. 360; 21 U.S.C. 371; 21 U.S.C. 374; . . .

*Abstract:* The proposed rule would modernize FDA's regulations on postmarketing safety reporting and pharmacovigilance for human drug and biological products, including blood and blood components, by capturing important new safety-related information, improving the quality and utility of submitted reports, and supporting enhanced alignment with internationally harmonized reporting guidelines. Among other things, the proposed rule would require the submission of certain nonclinical and clinical data to FDA in a periodic safety report, rather than the annual report. The proposed rule also would require application holders for drug products and certain biological products to establish and maintain a

pharmacovigilance quality system that reflects the application holder's unique needs and that may support a more streamlined, flexible approach to satisfying certain postmarketing safety reporting requirements.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/24	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Janice L. Weiner, Principal Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, 10903 New Hampshire Avenue, Building 51, Room 6270, Silver Spring, MD 20993-0002, Phone: 301-796-3475, Fax: 301-847-8440, Email: janice.weiner@fda.hhs.gov.

RIN: 0910-AI61

**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

*Food and Drug Administration (FDA)*

Completed Actions

**323. Requirements for Additional Traceability Records for Certain Foods [0910-AI44]**

*Legal Authority:* sec. 204(d) of the FDA Food Safety Modernization Act (FSMA) (Pub. L. 111-353) (21 U.S.C. 2223(d)); sec. 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(a)); sec. 361 of the Public Health Service Act (42 U.S.C. 264)

*Abstract:* This rule will establish additional recordkeeping requirements for entities that manufacture, process, pack, or hold foods that are designated as high-risk foods.

*Completed:*

Reason	Date	FR Cite
Final Rule .....	11/21/22	87 FR 70910
Final Action Effective.	01/20/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Katherine Vierk, Phone: 240-402-2122, Email: katherine.vierk@fda.hhs.gov.

RIN: 0910-AI44

**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

*Centers for Medicare & Medicaid Services (CMS)*

Proposed Rule Stage

**324. Medicare Advantage and Medicare Prescription Drug Benefit Program Payment Policy (CMS-4198) [0938-AU59]**

*Legal Authority:* 42 U.S.C. 1395w

*Abstract:* This proposed rule would codify long-established Medicare Advantage and Part D payment policies that are outside the scope of the annual Advance Notice/Rate Announcement.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jennifer Shapiro, Director, Medicare Plan Payment Group, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C1-13-18, 7500 Security Boulevard, Baltimore, MD 21244, Phone: 410-786-7407, Email: jennifer.shapiro@cms.hhs.gov.

RIN: 0938-AU59

**325. Transitional Coverage for Emerging Technologies (CMS-3421) [0938-AU86]**

*Regulatory Plan:* This entry is Seq. No. 71 in part II of this issue of the **Federal Register**.

RIN: 0938-AU86

**326. • CY 2024 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1784) (Section 610 Review) [0938-AV07]**

*Legal Authority:* 42 U.S.C. 1395hh; 42 U.S.C. 1302

*Abstract:* This annual proposed rule would revise payment policies under the Medicare physician fee schedule, and make other policy changes to payment under Medicare Part B including, but not limited to, establishing payment policies for dental services prior to the initiation of immunotherapy services. These changes would apply to services furnished beginning January 1, 2024. Additionally, this rule proposes updates to the Quality Payment Program.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/23	

*Regulatory Flexibility Analysis*  
Required: Yes.

*Agency Contact:* Gift Tee, Director, Division of Physician Services, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, 7500 Security Boulevard, MS: C1–09–07, Baltimore, MD 21244, *Phone:* 410–786–9316, *Email:* gift.tee@cms.hhs.gov.  
*RIN:* 0938–AV07

**327. • Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2024 Rates (CMS–1785) (Section 610 Review) [0938–AV08]**

*Legal Authority:* 42 U.S.C. 1395hh; 42 U.S.C. 1302

*Abstract:* This annual proposed rule would revise the Medicare hospital inpatient and long-term care hospital prospective payment systems for operating and capital-related costs. This proposed rule would implement changes arising from our continuing experience with these systems. In addition, the rule proposes to establish new requirements or revise existing requirements for quality reporting by specific Medicare providers.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/00/23	

*Regulatory Flexibility Analysis*  
Required: Yes.

*Agency Contact:* Donald Thompson, Director, Division of Acute Care, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4–01–26, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410–786–6504, *Email:* donald.thompson@cms.hhs.gov.  
*RIN:* 0938–AV08

**328. • CY 2024 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS–1786) (Section 610 Review) [0938–AV09]**

*Legal Authority:* 42 U.S.C. 1395hh; 42 U.S.C. 1302

*Abstract:* This annual proposed rule would revise the Medicare hospital outpatient prospective payment system to implement statutory requirements and changes arising from our continuing experience with this system. The proposed rule describes changes to the amounts and factors used to determine payment rates for services. In addition, the rule proposes changes to the

ambulatory surgical center payment system list of services and rates. This proposed rule would also update and refine the requirements for the Hospital Outpatient Quality Reporting (OQR) Program and the ASC Quality Reporting (ASCQR) Program.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/23	

*Regulatory Flexibility Analysis*  
Required: Yes.

*Agency Contact:* Elise Barringer, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4–03–06, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410–786–9222, *Email:* elise.barringer@cms.hhs.gov.  
*RIN:* 0938–AV09

**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

*Centers for Medicare & Medicaid Services (CMS)*

Long-Term Actions

**329. Omnibus COVID–19 Health Care Staff Vaccination (CMS–3415) (Section 610 Review) [0938–AU75]**

*Legal Authority:* 42 U.S.C. 1395hh; 42 U.S.C. 1302

*Abstract:* This interim final rule with comment period revises the infection control requirements that most Medicare- and Medicaid-participating providers and suppliers must meet to participate in the Medicare and Medicaid programs. These changes are necessary to protect the health and safety of residents, clients, patients, and staff and reflect lessons learned as result of the COVID–19 public health emergency. The revisions to the infection control requirements establish COVID–19 vaccination requirements for staff at the included Medicare- and Medicaid-participating providers and suppliers.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	11/05/21	86 FR 61555
Interim Final Rule Effective.	11/05/21	
Interim Final Rule Comment Period End.	01/04/22	
Reviewing Public Comments.	To Be Determined	

*Regulatory Flexibility Analysis*  
Required: Yes.

*Agency Contact:* Lauren Oviatt, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality, MS: C2–21–16, 7500 Security Boulevard, Baltimore, MD 21244–1850, *Phone:* 410–786–4683, *Email:* lauren.oviatt@cms.hhs.gov.  
*RIN:* 0938–AU75

**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

*Centers for Medicare & Medicaid Services (CMS)*

Completed Actions

**330. CY 2023 Home Health Prospective Payment System Rate Update and Home Infusion Therapy Services Payment Update (CMS–1766) (Completion of a Section 610 Review) [0938–AU77]**

*Legal Authority:* 42 U.S.C. 1302; 42 U.S.C. 1395hh

*Abstract:* This annual final rule updates the national standardized 30-day period payment rate, national per-visit rates used to calculate low utilization payment adjustments (LUPAs), and outlier payments under the Medicare prospective payment system for home health agencies based on the applicable home health payment update percentage. This rule also updates the home infusion therapy services payment rate. These changes apply to services furnished on or after January 1, 2023.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/23/22	87 FR 37600
NPRM Comment Period End.	08/16/22	
Final Action .....	11/04/22	87 FR 66790
Final Rule Effective.	01/01/23	

*Regulatory Flexibility Analysis*  
Required: Yes.

*Agency Contact:* Brian Slater, Director, Division of Home Health and Hospice, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4–07–07, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410–786–5229, *Email:* brian.slater@cms.hhs.gov.  
*RIN:* 0938–AU77

**331. CY 2023 Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System and Quality Incentive Program (CMS-1768) (Completion of a Section 610 Review) [0938-AU79]**

*Legal Authority:* 42 U.S.C. 1302; 42 U.S.C. 1395d(d); 42 U.S.C. 1395f(b); 42 U.S.C. 1395g; . . .

*Abstract:* This annual final rule updates the bundled payment system for ESRD facilities by January 1, 2023. The rule also updates the quality incentives in the ESRD program.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/28/22	87 FR 38464
NPRM Comment Period End.	08/22/22	
Final Action .....	11/07/22	87 FR 67136
Final Action Effective.	01/01/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Simone Dennis, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C5-06-16, Baltimore, MD 21244, *Phone:* 410 786-6041, *Email:* simone.dennis@cms.hhs.gov.

*RIN:* 0938-AU79

**332. FY 2023 Inpatient Psychiatric Facilities Prospective Payment System Rate (CMS-1769) (Completion of a Section 610 Review) [0938-AU80]**

*Legal Authority:* 42 U.S.C. 1302; 42 U.S.C. 1395hh

*Abstract:* This annual final rule updates the prospective payment system for inpatient psychiatric facilities (IPF) with discharges beginning on October 1, 2022.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/04/22	87 FR 19415

Action	Date	FR Cite
NPRM Comment Period End.	05/31/22	
Final Action .....	07/29/22	87 FR 46846
Final Action Effective.	10/01/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Nicolas Brock, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C5-05-27, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410-786-5148, *Email:* nicolas.brock@cms.hhs.gov.

*RIN:* 0938-AU80

**333. CY 2023 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1770) (Completion of a Section 610 Review) [0938-AU81]**

*Legal Authority:* 42 U.S.C. 1302; 42 U.S.C. 1395hh

*Abstract:* This annual final rule revises payment policies under the Medicare physician fee schedule, and makes other policy changes to payment under Medicare Part B. These changes apply to services furnished beginning January 1, 2023. Additionally, this rule updates the Quality Payment Program.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/29/22	87 FR 45860
NPRM Comment Period End.	09/06/22	
Final Action .....	11/18/22	87 FR 69404
Final Action Effective.	01/01/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Gift Tee, Director, Division of Physician Services, Department of Health and Human

Services, Centers for Medicare & Medicaid Services, Center for Medicare, 7500 Security Boulevard, MS: C1-09-07, Baltimore, MD 21244, *Phone:* 410-786-9316, *Email:* gift.tee@cms.hhs.gov. *RIN:* 0938-AU81

**334. Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2023 Rates (CMS-1771) (Completion of a Section 610 Review) [0938-AU84]**

*Legal Authority:* 42 U.S.C. 1302; 42 U.S.C. 1395hh

*Abstract:* This annual final rule revises the Medicare hospital inpatient and long-term care hospital prospective payment systems for operating and capital-related costs. This rule implements changes arising from our continuing experience with these systems. In addition, the rule establishes new requirements or revises existing requirements for quality reporting by specific Medicare providers.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/10/22	87 FR 28108
NPRM Comment Period End.	06/17/22	
Final Action .....	08/10/22	87 FR 48780
Final Action Effective.	10/01/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Donald Thompson, Director, Division of Acute Care, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4-01-26, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410-786-6504, *Email:* donald.thompson@cms.hhs.gov.

*RIN:* 0938-AU84

[FR Doc. 2023-02026 Filed 2-21-23; 8:45 am]

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Part IX

Department of Homeland Security

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Semiannual Regulatory Agenda

**DEPARTMENT OF HOMELAND SECURITY****Office of the Secretary****6 CFR Chs. I and II****[DHS Docket No. OGC–RP–04–001]****Unified Agenda of Federal Regulatory and Deregulatory Actions****AGENCY:** Office of the Secretary, DHS.**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** This regulatory agenda is a semiannual summary of projected regulations, existing regulations, and completed actions of the Department of Homeland Security (DHS) and its components. This agenda provides the public with information about DHS's regulatory and deregulatory activity. DHS expects that this information will enable the public to be more aware of, and effectively participate in, the Department's regulatory and deregulatory activity. DHS invites the public to submit comments on any aspect of this agenda.

**FOR FURTHER INFORMATION CONTACT:****General**

Please direct general comments and inquiries on the agenda to the

Regulatory Affairs Law Division, Office of the General Counsel, U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Avenue SE, Mail Stop 0485, Washington, DC 20528–0485.

**Specific**

Please direct specific comments and inquiries on individual actions identified in this agenda to the individual listed in the summary portion as the point of contact for that action.

**SUPPLEMENTARY INFORMATION:** DHS provides this notice pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, Sept. 19, 1980) and Executive Order 12866 “Regulatory Planning and Review” (Sept. 30, 1993) as incorporated in Executive Order 13563 “Improving Regulation and Regulatory Review” (Jan. 18, 2011), which require the Department to publish a semiannual agenda of regulations. The regulatory agenda is a summary of existing and projected regulations as well as actions completed since the publication of the last regulatory agenda for the Department. DHS's last semiannual regulatory agenda was published online on April 1, 2022, at <https://www.reginfo.gov/public/do/eAgendaMain>.

Beginning in fall 2007, the internet became the basic means for disseminating the Unified Agenda. The complete Unified Agenda is available online at [www.reginfo.gov](http://www.reginfo.gov).

The Regulatory Flexibility Act (5 U.S.C. 602) requires Federal agencies to publish their regulatory flexibility agendas in the **Federal Register**. A regulatory flexibility agenda shall contain, among other things, a brief description of the subject area of any rule which is likely to have a significant economic impact on a substantial number of small entities. DHS's printed agenda entries include regulatory actions that are in the Department's regulatory flexibility agenda. Printing of these entries is limited to fields that contain information required by the agenda provisions of the Regulatory Flexibility Act. Additional information on these entries is available in the Unified Agenda published on the internet.

The semiannual agenda of the Department conforms to the Unified Agenda format developed by the Regulatory Information Service Center.

Dated: October 6, 2022.

**Christina E. McDonald,**  
Associate General Counsel for Regulatory Affairs.

**OFFICE OF THE SECRETARY—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
335 .....	Homeland Security Acquisition Regulation, Enhancement of Whistleblower Protections for Contractor Employees.	1601–AA72
336 .....	Homeland Security Acquisition Regulation: Information Technology Security Awareness Training (HSAR Case 2015–002).	1601–AA78

**OFFICE OF THE SECRETARY—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
337 .....	Homeland Security Acquisition Regulation: Safeguarding of Controlled Unclassified Information (HSAR Case 2015–001).	1601–AA76

**U.S. CITIZENSHIP AND IMMIGRATION SERVICES—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
338 .....	U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements ( <b>Reg Plan Seq No. 93</b> ).	1615–AC68

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

**U.S. CITIZENSHIP AND IMMIGRATION SERVICES—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
339 .....	Requirements for Filing Motions and Administrative Appeals .....	1615–AB98

## U.S. COAST GUARD—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
340 .....	Claims Procedures Under the Oil Pollution Act of 1990 .....	1625-AA03
341 .....	Lifejacket Approval Harmonization .....	1625-AC62

## U.S. COAST GUARD—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
342 .....	Commercial Fishing Vessels—Implementation of 2010 and 2012 Legislation .....	1625-AB85

## U.S. CUSTOMS AND BORDER PROTECTION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
343 .....	Importer Security Filing and Additional Carrier Requirements ( <b>Section 610 Review</b> ) .....	1651-AA70
344 .....	Implementation of the Guam-CNMI Visa Waiver Program ( <b>Section 610 Review</b> ) .....	1651-AA77

## TRANSPORTATION SECURITY ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
345 .....	Amending Vetting Requirements for Employees With Access to a Security Identification Display Area (SIDA) ( <b>Reg Plan Seq No. 104</b> ).	1652-AA70

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
346 .....	Ammonium Nitrate Security Program ( <b>Reg Plan Seq No. 113</b> ) .....	1670-AA00
347 .....	Chemical Facility Anti-Terrorism Standards (CFATS) ( <b>Reg Plan Seq No. 114</b> ) .....	1670-AA01

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## DEPARTMENT OF HOMELAND SECURITY (DHS)

Office of the Secretary (OS)

Proposed Rule Stage

**335. Homeland Security Acquisition Regulation, Enhancement of Whistleblower Protections for Contractor Employees [1601-AA72]**

*Legal Authority:* Sec. 827 of the National Defense Authorization Act (NDAA) for Fiscal Year 2013, (Pub. L. 112–239, enacted January 2, 2013); 41 U.S.C. 1302(a)(2) and 1707

*Abstract:* The Department of Homeland Security (DHS) is proposing to amend its Homeland Security Acquisition Regulation (HSAR) parts 3003 and 3052 to implement section 827 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239, enacted January 2,

2013) for the United States Coast Guard (USCG). Section 827 of the NDAA for FY 2013 established enhancements to the Whistleblower Protections for Contractor Employees for all agencies subject to section 2409 of title 10, United States Code, which includes the USCG.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Nancy Harvey, Policy Analyst, Department of Homeland Security, Office of the Chief Procurement Officer, Room 3636–15, 301 7th Street SW, Washington, DC 20528, Phone: 202 447–0956, Email: nancy.harvey@hq.dhs.gov.

RIN: 1601-AA72

**336. Homeland Security Acquisition Regulation: Information Technology Security Awareness Training (HSAR Case 2015–002) [1601-AA78]**

*Legal Authority:* 5 U.S.C. 301 and 302; 41 U.S.C. 1707, 1302 and 1303

*Abstract:* This Homeland Security Acquisition Regulation (HSAR) rule would standardize information technology security awareness training and DHS Rules of Behavior requirements for contractor and subcontractor employees who access DHS information systems and information resources or contractor-owned and/or operated information systems and information resources capable of collecting, processing, storing, or transmitting controlled unclassified information (CUI).

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/19/17	82 FR 6446
NPRM Comment Period End.	03/20/17	
NPRM Comment Period Extended.	03/20/17	82 FR 14341
NPRM Comment Period Extended End.	04/19/17	
Supplemental NPRM.	02/00/23	

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Shaundra Ford, Procurement Analyst, Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation, 245 Murray Lane SW, Washington, DC 20528, *Phone:* 202 447-0056, *Email:* shaundra.ford@hq.dhs.gov.

Nancy Harvey, Policy Analyst, Department of Homeland Security, Office of the Chief Procurement Officer, Room 3636-15, 301 7th Street SW, Washington, DC 20528, *Phone:* 202 447-0956, *Email:* nancy.harvey@hq.dhs.gov.

RIN: 1601-AA78

**DEPARTMENT OF HOMELAND SECURITY (DHS)***Office of the Secretary (OS)*

Final Rule Stage

**337. Homeland Security Acquisition Regulation: Safeguarding of Controlled Unclassified Information (HSAR Case 2015-001) [1601-AA76]**

*Legal Authority:* 5 U.S.C. 301 to 302; 41 U.S.C. 1302, 1303 and 1707

*Abstract:* This Homeland Security Acquisition Regulation (HSAR) rule would implement security and privacy measures to ensure Controlled Unclassified Information (CUI), such as Personally Identifiable Information (PII), is adequately safeguarded by DHS contractors. Specifically, the rule would define key terms, outline security requirements and inspection provisions for contractor information technology (IT) systems that store, process or transmit CUI, institute incident notification and response procedures, and identify post-incident credit monitoring requirements.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/19/17	82 FR 6429
NPRM Comment Period End.	03/20/17	

Action	Date	FR Cite
NPRM Comment Period Extended.	03/20/17	82 FR 14341
NPRM Comment Period Extended End.	04/19/17	
Final Rule .....	12/00/22	

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Shaundra Ford, Procurement Analyst, Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation, 245 Murray Lane SW, Washington, DC 20528, *Phone:* 202 447-0056, *Email:* shaundra.ford@hq.dhs.gov.

Nancy Harvey, Policy Analyst, Department of Homeland Security, Office of the Chief Procurement Officer, Room 3636-15, 301 7th Street SW, Washington, DC 20528, *Phone:* 202 447-0956, *Email:* nancy.harvey@hq.dhs.gov.

RIN: 1601-AA76

**DEPARTMENT OF HOMELAND SECURITY (DHS)***U.S. Citizenship and Immigration Services (USCIS)*

Proposed Rule Stage

**338. U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements [1615-AC68]**

*Regulatory Plan:* This entry is Seq. No. 93 in part II of this issue of the **Federal Register**.

RIN: 1615-AC68

**DEPARTMENT OF HOMELAND SECURITY (DHS)***U.S. Citizenship and Immigration Services (USCIS)*

Long-Term Actions

**339. Requirements for Filing Motions and Administrative Appeals [1615-AB98]**

*Legal Authority:* 5 U.S.C. 552 and 552a; 8 U.S.C. 1101, 1103 and 1304; 6 U.S.C. 112

*Abstract:* The Department of Homeland Security (DHS) is proposing this rule to improve the administration of U.S. Citizenship and Immigration Services (USCIS) appeals, motions, and certifications. The proposed changes would update and restructure the regulations in order to clarify and streamline the administrative review process, increase efficiency, and reflect

the establishment of DHS and its components.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/23	

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* William K. Renwick, Jr., Branch Chief, Department of Homeland Security, U.S. Citizenship and Immigration Services, Administrative Appeals Office, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588-0009, *Phone:* 240 721-3000.

RIN: 1615-AB98

**DEPARTMENT OF HOMELAND SECURITY (DHS)***U.S. Coast Guard (USCG)*

Proposed Rule Stage

**340. Claims Procedures Under the Oil Pollution Act of 1990 [1625-AA03]**

*Legal Authority:* 33 U.S.C. 2713 and 2714

*Abstract:* The purpose of this project is to remove superseded regulations at 33 Code of Federal Regulations (CFR) part 135, and to finalize the Oil Pollution Act of 1990 (OPA90) claims procedures at 33 CFR part 136. The OPA90 claims procedures, implementing OPA90 section 1013 (Claims Procedures) and section 1014 (Designation of Source and Advertisement), were established by an interim rule, titled "Claims under the Oil Pollution Act of 1990" (Interim Rule) that has not been substantively amended since it was published in 1992. This rulemaking supports the Coast Guard's strategic goal of protection of natural resources.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule Correction .....	08/12/92	57 FR 36314
Interim Final Rule Comment Period End.	09/09/92	57 FR 41104
Notice of Inquiry	12/10/92	
Notice of Inquiry Comment Period End.	11/01/11	76 FR 67385
NPRM .....	01/30/12	
	05/00/23	

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Benjamin White, Project Manager, Department of Homeland Security, U.S. Coast Guard, National Pollution Funds Center

(NPFC), 2703 Martin Luther King Jr. Avenue SE, STOP 7605, Washington, DC 20593-7605, Phone: 202 795-6066, Email: [benjamin.h.white@uscg.mil](mailto:benjamin.h.white@uscg.mil).  
RIN: 1625-AA03

### 341. Life Jacket Approval Harmonization [1625-AC62]

*Legal Authority:* 46 U.S.C. 3306(a); 46 U.S.C. 3306(b); 46 U.S.C. 4102(a); 46 U.S.C. 4102(b); 46 U.S.C. 4302(a); 46 U.S.C. 4502(a); 46 U.S.C. 4502(c)(2)(B)

*Abstract:* The Coast Guard proposes to amend the lifejacket approval requirements and follow-up program requirements by incorporating new bi-national standards. At the same time, the Coast Guard proposes to amend lifejacket and personal flotation devices (PFDs) carriage requirements to allow for the use of equipment approved to the new standards, and to remove obsolete equipment approval requirements. The new standards are intended to replace the legacy standards. The proposed amendments will streamline the process for approval of PFDs and allow manufacturers the opportunity to produce more innovative equipment that meets the approval requirements of both Canada and the United States, while reducing the burden for manufacturers in both the approval process and follow-up program. The proposed rule is expected to provide a cost savings by reducing the regulatory burden on PFD manufacturers by harmonizing our PFD approval standards with Canada, requiring less frequent inspections of manufacturing facilities, providing lower cost PFD user manuals, and by potentially creating a new market in PFDs with a lower buoyancy rating. This rule is consistent with Executive Order 14058, which directs agencies to take actions that improve service delivery and customer experience by decreasing administrative burdens, enhancing transparency, and improving the efficiency and effectiveness of government.

#### *Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jacqueline M. Yurkovich, Project Manager, Department of Homeland Security, U.S. Coast Guard, Office of Design and Engineering Standards (CG-ENG-4), 2703 Martin Luther King Jr. Avenue SE, STOP 7509, Washington, DC 20593-7509, Phone: 202 372-1389, Email: [jacqueline.m.yurkovich@uscg.mil](mailto:jacqueline.m.yurkovich@uscg.mil).

RIN: 1625-AC62

### DEPARTMENT OF HOMELAND SECURITY (DHS)

*U.S. Coast Guard (USCG)*

Final Rule Stage

### 342. Commercial Fishing Vessels—Implementation of 2010 and 2012 Legislation [1625-AB85]

*Legal Authority:* 46 U.S.C. 4502 and 5103; Pub. L. 111-281; Pub. L. 112-213

*Abstract:* The Coast Guard would implement 2010 and 2012 legislation that pertains to uninspected commercial fishing industry vessels. The requirements took effect upon enactment of the legislation but require amendments to Coast Guard regulations to be implemented. Coast Guard is changing the applicability of the regulations, and adding new requirements to safety training, equipment, vessel examinations, vessel safety standards, the documentation of maintenance, and the termination of unsafe operations. This rulemaking promotes the Coast Guard's maritime safety mission.

#### *Timetable:*

Action	Date	FR Cite
NPRM .....	06/21/16	81 FR 40437
NPRM Comment Period Extended.	08/15/16	81 FR 53986
NPRM Comment Period End.	10/19/16	
NPRM Comment Period Extended End.	12/18/16	
Final Rule .....	11/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Joseph Myers, Project Manager, Department of Homeland Security, U.S. Coast Guard, Office of Commercial Vessel Compliance (CG-CVC-3), 2703 Martin Luther King Jr. Avenue SE, STOP 7501, Washington, DC 20593-7501, Phone: 202 372-1249, Email: [joseph.d.myers@uscg.mil](mailto:joseph.d.myers@uscg.mil).

RIN: 1625-AB85

### DEPARTMENT OF HOMELAND SECURITY (DHS)

*U.S. Customs and Border Protection (USCBP)*

Long-Term Actions

### 343. Importer Security Filing and Additional Carrier Requirements (Section 610 Review) [1651-AA70]

*Legal Authority:* Pub. L. 109-347, sec. 203; 5 U.S.C. 301; 19 U.S.C. 66; 19 U.S.C. 1431; 19 U.S.C. 1433 and 1434; 19 U.S.C. 1624; 19 U.S.C. 2071 (note); 46 U.S.C. 60105

*Abstract:* This final rule implements the provisions of section 203 of the Security and Accountability for Every Port Act of 2006. On November 25, 2008, Customs and Border Protection (CBP) published an interim final rule (CBP Dec. 08-46) in the **Federal Register** (73 FR 71730), that finalized most of the provisions proposed in the Notice of Proposed Rulemaking. It requires carrier and importers to provide to CBP, via a CBP approved electronic data interchange system, certain advance information pertaining to cargo brought into the United States by vessel to enable CBP to identify high-risk shipments to prevent smuggling and ensure cargo safety and security. The interim final rule did not finalize six data elements that were identified as areas of potential concern for industry during the rulemaking process and, for which, CBP provided some type of flexibility for compliance with those data elements. CBP solicited public comment on these six data elements and also invited comments on the revised Regulatory Assessment and Final Regulatory Flexibility Analysis. (See 73 FR 71782-85 for regulatory text and 73 CFR 71733-34 for general discussion.)

#### *Timetable:*

Action	Date	FR Cite
NPRM .....	01/02/08	73 FR 90
NPRM Comment Period End.	03/03/08	
NPRM Comment Period Extended.	02/01/08	73 FR 6061
NPRM Comment Period Extended End.	03/18/08	
Interim Final Rule	11/25/08	73 FR 71730
Interim Final Rule Effective.	01/26/09	
Interim Final Rule Comment Period End.	06/01/09	
Correction .....	07/14/09	74 FR 33920
Correction .....	12/24/09	74 FR 68376
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*  
*Agency Contact:* Brian Sale, Branch Chief, Manifest & Conveyance Security Division, Cargo & Conveyance, Office of Field Operation, Department of Homeland Security, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229, Phone: 202 325-3338, Email: [brian.a.sale@cbp.dhs.gov](mailto:brian.a.sale@cbp.dhs.gov); [of-manifestbranch@cbp.dhs.gov](mailto:of-manifestbranch@cbp.dhs.gov).  
*RIN:* 1651-AA70

**344. Implementation of the Guam-CNMI Visa Waiver Program (Section 610 Review) [1651-AA77]**  
*Legal Authority:* Pub. L. 110-229, sec. 702

*Abstract:* The interim final rule amends Department of Homeland Security (DHS) regulations to implement section 702 of the Consolidated Natural Resources Act of 2008 (CNRA). This law extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and provides for a joint visa waiver program for travel to Guam and the CNMI. This rule implements section 702 of the CNRA by amending the regulations to replace the current Guam Visa Waiver Program with a new Guam-CNMI Visa Waiver Program. The amended regulations set forth the requirements for nonimmigrant visitors who seek admission for business or pleasure and solely for entry into and stay on Guam or the CNMI without a visa. This rule also establishes six ports of entry in the CNMI for purposes of administering and enforcing the Guam-CNMI Visa Waiver Program. Section 702 of the Consolidated Natural Resources Act of 2008 (CNRA), subject to a transition period, extends the immigration laws of the United States to

the Commonwealth of the Northern Mariana Islands (CNMI) and provides for a visa waiver program for travel to Guam and/or the CNMI. On January 16, 2009, the Department of Homeland Security (DHS), Customs and Border Protection (CBP), issued an interim final rule in the **Federal Register** replacing the then-existing Guam Visa Waiver Program with the Guam-CNMI Visa Waiver Program and setting forth the requirements for nonimmigrant visitors seeking admission into Guam and/or the CNMI under the Guam-CNMI Visa Waiver Program. As of November 28, 2009, the Guam-CNMI Visa Waiver Program is operational. This program allows nonimmigrant visitors from eligible countries to seek admission for business or pleasure for entry into Guam and/or the CNMI without a visa for a period of authorized stay not to exceed 45 days. This rulemaking would finalize the January 2009 interim final rule.  
*Timetable:*

Action	Date	FR Cite
Interim Final Rule	01/16/09	74 FR 2824
Interim Final Rule Effective.	01/16/09	
Interim Final Rule Comment Period End.	03/17/09	
Technical Amendment; Change of Implementation Date.	05/28/09	74 FR 25387
Final Action .....	To Be Determined	

*Regulatory Flexibility Analysis Required: No.*  
*Agency Contact:* Neyda I. Yejo, Program Manager, Electronic System for Travel Authorization, Office of Field Operations, Department of Homeland Security, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue

NW, Washington, DC 20229, Phone: 202 344-2373 Email: [neyda.i.yejo@cbp.dhs.gov](mailto:neyda.i.yejo@cbp.dhs.gov).  
*RIN:* 1651-AA77

**DEPARTMENT OF HOMELAND SECURITY (DHS)**  
*Transportation Security Administration (TSA)*  
Proposed Rule Stage  
**345. Amending Vetting Requirements for Employees With Access to a Security Identification Display Area (SIDA) [1652-AA70]**

*Regulatory Plan:* This entry is Seq. No. 104 in part II of this issue of the **Federal Register**.  
*RIN:* 1652-AA70

**DEPARTMENT OF HOMELAND SECURITY (DHS)**  
*Cybersecurity and Infrastructure Security Agency (CISA)*  
Proposed Rule Stage  
**346. Ammonium Nitrate Security Program [1670-AA00]**  
*Regulatory Plan:* This entry is Seq. No. 113 in part II of this issue of the **Federal Register**.  
*RIN:* 1670-AA00

**347. Chemical Facility Anti-Terrorism Standards (CFATS) [1670-AA01]**  
*Regulatory Plan:* This entry is Seq. No. 114 in part II of this issue of the **Federal Register**.  
*RIN:* 1670-AA01



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Part X

Department of the Interior

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Semiannual Regulatory Agenda



**DEPARTMENT OF THE INTERIOR****Office of the Secretary****25 CFR Ch. I****30 CFR Chs. II and VII****36 CFR Ch. I****43 CFR Subtitle A, Chs. I and II****48 CFR Ch. 14****50 CFR Chs. I and IV****[167D0102DM; DS6CS00000;  
DLSN00000.00000; DX6CS25]****Semiannual Regulatory Agenda****AGENCY:** Office of the Secretary, Interior.**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** This notice provides the semiannual agenda of Department of the Interior (Department) rules scheduled for review or development between Fall 2022 and Fall 2023. The Regulatory Flexibility Act and Executive Order 12866 require publication of the agenda.

**ADDRESSES:** Unless otherwise indicated, all agency contacts are located at the Department of the Interior, 1849 C Street NW, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Please direct all comments and inquiries about these rules to the appropriate agency contact. Please direct general comments relating to the agenda to the Office of Executive Secretariat and Regulatory Affairs, Department of the Interior, at the address above or at (202) 208-3181.

**SUPPLEMENTARY INFORMATION:** With this publication, the Department satisfies the requirement of Executive Order 12866 that the Department publish an agenda of rules that we have issued or expect to issue and of currently effective rules that we have scheduled for review.

Simultaneously, the Department meets the requirement of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to publish an agenda in April and October of each year identifying rules that will have significant economic effects on a substantial number of small entities. We have specifically identified in the agenda rules that will have such effects.

This edition of the Unified Agenda of Federal Regulatory and Deregulatory

Actions includes The Regulatory Plan, which appears in both the online Unified Agenda and in part II of the **Federal Register** that includes the Unified Agenda. The Department's Statement of Regulatory Priorities is included in the Plan.

In some cases, the Department has withdrawn rules that were placed on previous agendas for which there has been no publication activity or for which a proposed or interim rule was published. There is no legal significance to the omission of an item from this agenda. Withdrawal of a rule does not necessarily mean that the Department will not proceed with the rulemaking. Withdrawal allows the Department to assess the action further and determine whether rulemaking is appropriate. Following such an assessment, the Department may determine that certain rules listed as withdrawn under this agenda are appropriate for promulgation.

**Bivan R. Patnaik,**

*Deputy Director of Policy and Regulatory Affairs, Executive Secretariat and Regulatory Affairs.*

**BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
348 .....	Outer Continental Shelf Civil Penalties, Surety Bond Requirements When Filing an Appeal .....	1014-AA57

**BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
349 .....	Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions.	1014-AA52

**BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
350 .....	Revisions to Decommissioning Requirements on the OCS .....	1014-AA53

**ASSISTANT SECRETARY FOR LAND AND MINERALS MANAGEMENT—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
351 .....	Risk Management, Financial Assurance and Loss Prevention—Decommissioning Activities and Obligations.	1082-AA02

**UNITED STATES FISH AND WILDLIFE SERVICE—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
352 .....	Importation, Exportation and Transportation of Wildlife; Updates to the Regulations .....	1018-BF16
353 .....	Migratory Bird Hunting; 2023–24 Migratory Game Bird Hunting Regulations .....	1018-BF64

## UNITED STATES FISH AND WILDLIFE SERVICE—PROPOSED RULE STAGE—Continued

Sequence No.	Title	Regulation Identifier No.
354 .....	Migratory Bird Hunting; 2024–25 Migratory Game Bird Hunting Regulations .....	1018–BG63

## UNITED STATES FISH AND WILDLIFE SERVICE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
355 .....	Migratory Bird Hunting; 2022–23 Migratory Game Bird Hunting Regulations .....	1018–BF07

## NATIONAL PARK SERVICE—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
356 .....	Commercial Visitor Services; Concession Contracts .....	1024–AE57

## BUREAU OF OCEAN ENERGY MANAGEMENT—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
357 .....	Air Quality Rule .....	1010–AE09

## BUREAU OF LAND MANAGEMENT—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
358 .....	Sustained Yield and Land Health ( <b>Section 610 Review</b> ) .....	1004–AE92

## BUREAU OF LAND MANAGEMENT—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
359 .....	Helium Contracts ( <b>Section 610 Review</b> ) .....	1004–AE93

## DEPARTMENT OF THE INTERIOR (DOI)

*Bureau of Safety and Environmental Enforcement (BSEE)*

## Proposed Rule Stage

**348. • Outer Continental Shelf Civil Penalties, Surety Bond Requirements When Filing an Appeal [1014–AA57]**

*Legal Authority:* Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 to 1356a

*Abstract:* This rulemaking would clarify BSEE's existing regulatory authority under 30 CFR 250.1409, which establishes criteria that must be met before a party may proceed with an appeal of a civil penalty pursuant to 30 CFR part 290. Before filing an appeal to the Interior Board of Land Appeals (IBLA), an operator must either submit a surety bond to BSEE's sister agency, BOEM, in the amount of the penalty, or notify BOEM that they want their lease

bond to be used as the bond for the penalty amount.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/00/23	
NPRM Comment Period End.	06/00/23	
Final Action .....	10/00/23	
Final Action Effective.	11/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Kirk Malstrom, Chief, Regulations and Standards Branch, Department of the Interior, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Sterling, VA 20166, *Phone:* 703 787–1751, *Fax:* 703 787–1555, *Email:* kirk.malstrom@bsee.gov.

*RIN:* 1014–AA57

## DEPARTMENT OF THE INTERIOR (DOI)

*Bureau of Safety and Environmental Enforcement (BSEE)*

## Final Rule Stage

**349. Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions [1014–AA52]**

*Legal Authority:* Not Yet Determined

*Abstract:* This rulemaking would revise the Bureau of Safety and Environmental Enforcement (BSEE) regulations published in the 2019 final rule entitled “Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions,” 84 FR 21908 (May 15, 2019), for drilling, workover, completion and decommissioning operations. In accordance with Executive Order (E.O.) 13990 (Protecting Public Health and the Environment and Restoring Science to Tackle the Climate

Crisis) and the E.O.'s accompanying "President's Fact Sheet: List of Agency Actions for Review," BSEE reviewed the 2019 final rule and plans to propose updates to Subpart G of 30 CFR part 250 to ensure operations are conducted safely and in an environmentally responsible manner.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/14/22	87 FR 56354
NPRM Comment Period End.	11/14/22	
Final Action .....	05/00/23	
Final Action Effective.	06/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Kirk Malstrom, Chief, Regulations and Standards Branch, Department of the Interior, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Sterling, VA 20166, *Phone:* 703 787-1751, *Fax:* 703 787-1555, *Email:* kirk.malstrom@bsee.gov.

*RIN:* 1014-AA52

## DEPARTMENT OF THE INTERIOR (DOI)

*Bureau of Safety and Environmental Enforcement (BSEE)*

Long-Term Actions

### 350. Revisions to Decommissioning Requirements on the OCS [1014-AA53]

*Legal Authority:* Outer Continental Shelf Lands Act, 43 U.S.C. 1331 to 1356a

*Abstract:* This proposed rule would address issues relating to (1) idle iron by adding a definition of this term to clarify that it applies to idle wells and structures on active leases; (2) abandonment in place of subsea infrastructure by adding regulations addressing when BSEE may approve decommissioning-in-place instead of removal of certain subsea equipment; and (3) other operational considerations.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/23	
NPRM Comment Period End.	02/00/24	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Kirk Malstrom, Chief, Regulations and Standards Branch, Department of the Interior, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Sterling, VA 20166, *Phone:* 703 787-

1751, *Fax:* 703 787-1555, *Email:* kirk.malstrom@bsee.gov.

*RIN:* 1014-AA53

## DEPARTMENT OF THE INTERIOR (DOI)

*Assistant Secretary for Land and Minerals Management (ASLM)*

Final Rule Stage

### 351. Risk Management, Financial Assurance and Loss Prevention—Decommissioning Activities and Obligations [1082-AA02]

*Legal Authority:* 43 U.S.C. 1334(a)

*Abstract:* On October 12, 2020, the Bureau of Ocean Energy Management (BOEM) and Bureau of Safety and Environmental Enforcement (BSEE) published the joint proposed rule in the **Federal Register** (85 FR 65904). BSEE will continue to pursue this rulemaking as a BSEE-only final rule to revise policies and procedures concerning compliance with decommissioning obligations for Outer Continental Shelf (OCS) oil and gas. The final rule will clarify and streamline specific regulatory requirements associated with the operational and procedural aspects of applicable decommissioning responsibilities of OCS lessees and grant holders. BOEM will continue to evaluate and develop a comprehensive set of regulations to manage the risks and financial obligations associated with industry activities on the OCS and pursue these actions in a separate rulemaking under RIN 1010-AE14.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/16/20	85 FR 65904
NPRM Comment Period End.	12/15/20	
Final Action .....	12/00/22	
Final Action Effective.	12/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Bivan Patnaik, Deputy Director of Regulatory Affairs, Department of the Interior, Washington, DC 20240, *Phone:* 202 208-4582, *Email:* bivan\_patnaik@ios.doi.gov.

*RIN:* 1082-AA02

## DEPARTMENT OF THE INTERIOR (DOI)

*United States Fish and Wildlife Service (FWS)*

Proposed Rule Stage

### 352. Importation, Exportation and Transportation of Wildlife; Updates to the Regulations [1018-BF16]

*Legal Authority:* 16 U.S.C. 33 8(d)-(f); 16 U.S.C. 668; 16 U.S.C. 704; 16 U.S.C. 712; 16 U.S.C. 1382; 16 U.S.C. 1538(d)-(f); 16 U.S.C. 1540(f); 16 U.S.C. 3371 to 3378; 16 U.S.C. 4223 to 4244; 16 U.S.C. 4901 to 4916; 18 U.S.C. 42; 31 U.S.C. 42; 31 U.S.C. 9701; . . .

*Abstract:* This proposed rule would revise FWS's regulations governing the importation and exportation of wildlife. In this rulemaking, FWS would review all sections of 50 CFR part 14 and provide necessary revisions.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Edward Grace, Assistant Director, Office of Law Enforcement, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS: LEO, Falls Church, VA 22041-3803, *Phone:* 703 358-1949, *Fax:* 703 358-1947, *Email:* edward\_grace@fws.gov.

*RIN:* 1018-BF16

### 353. Migratory Bird Hunting; 2023-24 Migratory Game Bird Hunting Regulations [1018-BF64]

*Legal Authority:* 16 U.S.C. 703 *et seq.*; 16 U.S.C. 742a-j

*Abstract:* This proposed rule would establish annual hunting regulations for certain migratory game birds. FWS annually prescribes the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. After these frameworks are established, States and Tribes may select season dates, bag limits, and other regulatory options for their hunting seasons.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/03/22	87 FR 66247
NPRM Comment Period End.	12/05/22	
Proposed Frameworks.	02/00/23	
Proposed Tribal Regulations.	03/00/23	
Final Frameworks	07/00/23	
Final Tribal Regulations.	08/00/23	

Action	Date	FR Cite
Seasons and Bag Limits.	08/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Dr. Eric L. Kershner, Chief, Division of Conservation, Permits, and Regulations, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS: MB, Falls Church, VA 22041, *Phone:* 703 358–2376, *Fax:* 703 358–2217, *Email:* eric\_kershner@fws.gov. *RIN:* 1018–BF64

### 354. Migratory Bird Hunting; 2024–25 Migratory Game Bird Hunting Regulations [1018–BG63]

*Legal Authority:* 16 U.S.C. 703 *et seq.*; 16 U.S.C. 742a–j

*Abstract:* This rulemaking action would establish annual hunting regulations for certain migratory game birds. FWS annually prescribes the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. After these frameworks are established, States and Tribes may select season dates, bag limits, and other regulatory options for their hunting seasons.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Dr. Eric L. Kershner, Chief, Division of Conservation, Permits, and Regulations, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS: MB, Falls Church, VA 22041, *Phone:* 703 358–2376, *Fax:* 703 358–2217, *Email:* eric\_kershner@fws.gov. *RIN:* 1018–BG63

## DEPARTMENT OF THE INTERIOR (DOI)

*United States Fish and Wildlife Service (FWS)*

Completed Actions

### 355. Migratory Bird Hunting; 2022–23 Migratory Game Bird Hunting Regulations [1018–BF07]

*Legal Authority:* 16 U.S.C. 703 to 712; 16 U.S.C. 742a–j

*Abstract:* This rulemaking action established annual hunting regulations for certain migratory game birds for the 2022–23 hunting season. FWS annually prescribes outside limits (frameworks) within which States and Tribes may

select hunting seasons. This rulemaking action was conducted under the direction of the Service Migratory Bird Regulations Committee and the Flyway Councils.

*Timetable:*

Action	Date	FR Cite
Notice of Meeting .....	03/25/21	86 FR 15957
Meeting .....	04/06/21	
NPRM .....	08/31/21	86 FR 48649
NPRM Comment Period End.	09/30/21	
NPRM—Proposed Frameworks.	02/02/22	87 FR 5946
NPRM Comment Period End—Proposed Frameworks.	03/04/22	
NPRM—Proposed Tribal Regulations.	06/14/22	87 FR 35942
NPRM Comment Period End—Proposed Tribal Regulations.	07/14/22	
Final Action—Final Frameworks.	07/15/22	87 FR 42598
Final Action Effective.	07/15/22	
Final Action—Season Selections.	08/19/22	87 FR 50965
Final Action Effective.	08/19/22	
Final Action—Final Tribal Regulations.	08/31/22	87 FR 53404
Final Action Effective.	08/31/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jerome Ford, Assistant Director—Migratory Bird Program, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS–MB, Falls Church, VA 22041–3803, *Phone:* 703 358–1050, *Email:* jerome\_ford@fws.gov. *RIN:* 1018–BF07

## DEPARTMENT OF THE INTERIOR (DOI)

*National Park Service (NPS)*

Final Rule Stage

### 356. Commercial Visitor Services; Concession Contracts [1024–AE57]

*Legal Authority:* 54 U.S.C. 101926  
*Abstract:* This final rule will revise regulations that govern the solicitation, award, and administration of concessions contracts to provide commercial visitor services at NPS units under the authority granted through the Concessions Management Improvement Act of 1998. The changes will reduce administrative burdens and expand

sustainable, high quality, and contemporary concessioner-provided visitor services in national parks.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/20/20	85 FR 43775
NPRM Comment Period End.	09/18/20	
Final Rule .....	12/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Kurt M. Rausch, Chief, Contract Management, Department of the Interior, National Park Service, 1849 C Street NW, Washington, DC 20240, *Phone:* 202 513–7207, *Email:* kurt\_rausch@nps.gov. *RIN:* 1024–AE57

## DEPARTMENT OF THE INTERIOR (DOI)

*Bureau of Ocean Energy Management (BOEM)*

Long-Term Actions

### 357. Air Quality Rule [1010–AE09]

*Legal Authority:* OCSLA sec. 5(a)(8)  
*Abstract:* This proposed rule would identify opportunities for clarifying air quality regulations.

*Timetable:*

Action	Date	FR Cite
NPRM .....	To Be Determined	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Karen Thundiyil, Department of the Interior, Bureau of Ocean Energy Management, 1849 C Street NW, Washington, DC 20240, *Phone:* 202 208–3977. *RIN:* 1010–AE09

## DEPARTMENT OF THE INTERIOR (DOI)

*Bureau of Land Management (BLM)*

Proposed Rule Stage

### 358. • Sustained Yield and Land Health (Section 610 Review) [1004–AE92]

*Legal Authority:* 43 U.S.C. 1732(a)  
*Abstract:* The Department of the Interior (DOI), Bureau of Land Management (BLM) is drafting a rule to clarify and support the principles of multiple use and sustained yield in the management of the public lands. This rule would incorporate climate resiliency and restoration through conservation and preservation in the management of the public lands pursuant to the Federal Land Policy and

Management Act (FLPMA) and other relevant authorities. This proposed rule rests within 43 CFR 6000, which includes Conservation and Preservation, 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.

Timetable:

Action	Date	FR Cite
NPRM .....	12/00/22	

Regulatory Flexibility Analysis Required: Undetermined.  
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](mailto:smallory@blm.gov)  
RIN: 1004-AE92

DEPARTMENT OF THE INTERIOR (DOI)  
Bureau of Land Management (BLM)  
Final Rule Stage

359. • Helium Contracts (Section 610 Review) [1004-AE93]  
Legal Authority: 50 U.S.C. sec. 167d (d)(1)  
Abstract: On October 2, 2013, Congress enacted the Helium Stewardship Act of 2013. This Act required the Department of the Interior (DOI), through the Director of the Bureau of Land Management (BLM), to begin offering helium for auction or sale on an annual basis. Additionally, the Helium Stewardship Act of 2013 required BLM to dispose of the Federal Helium System (including the Federal Helium Reserve) as of September 30, 2021. Any excess helium and helium

assets remaining on September 30, 2021, will be transferred to the General Services Administration (GSA), which will follow its statutory disposal process. Federal In-Kind users will continue to have access to helium until September 30, 2022, while the GSA completes its disposal process.

Timetable:

Action	Date	FR Cite
Final Action .....	12/00/22	

Regulatory Flexibility Analysis Required: Yes.  
Agency Contact: Amy Hay, Division Chief, Division of Business Resources, Department of the Interior, Bureau of Land Management, Denver Federal Center, Building 50, Denver, CO 80225-0047, Phone: 703 870-8844, Email: [ahay@blm.gov](mailto:ahay@blm.gov).  
RIN: 1004-AE93  
[FR Doc. 2023-02028 Filed 2-21-23; 8:45 am]  
BILLING CODE 4334-63-P



# FEDERAL REGISTER

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Part XI

Department of Justice

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Semiannual Regulatory Agenda

**DEPARTMENT OF JUSTICE****8 CFR Ch. V****21 CFR Ch. I****27 CFR Ch. II****28 CFR Ch. I, V****48 CFR Ch. XXVIII****Regulatory Agenda****AGENCY:** Department of Justice.**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** The Department of Justice is publishing its fall 2022 regulatory agenda pursuant to Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. 601 to 612 (1988).

**FOR FURTHER INFORMATION CONTACT:** Robert Hinchman, Senior Counsel, Office of Legal Policy, Department of Justice, Room 4252, 950 Pennsylvania

Avenue NW, Washington, DC 20530, (202) 514-8059.

**SUPPLEMENTARY INFORMATION:** This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions includes The Regulatory Plan, which appears in both the online Unified Agenda and in part II of the **Federal Register** that includes the Unified Agenda. The Department of Justice's Statement of Regulatory Priorities is included in the Plan.

Beginning with the fall 2007 edition, the internet has been the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at [www.reginfo.gov](http://www.reginfo.gov) in a format that offers users a greatly enhanced ability to obtain information from the Agenda database. Members of the public who wish to comment on proposed regulations that are open for comment may do so at the government-wide website [www.regulations.gov](http://www.regulations.gov).

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C.

602), the Department of Justice's printed agenda entries include only:

Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the internet. In addition, for fall editions of the Agenda, the entire Regulatory Plan will continue to be printed in the **Federal Register**, as in past years, including the Department of Justice's regulatory plan.

Dated: September 30, 2022.

**Hampton Y. Dellinger,**  
Assistant Attorney General, Office of Legal Policy.

**CIVIL RIGHTS DIVISION—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
360 .....	Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Governments ( <b>Reg Plan Seq No. 121</b> ).	1190-AA79

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

**DEPARTMENT OF JUSTICE (DOJ)***Civil Rights Division (CRT)*

Proposed Rule Stage

**360. Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Governments [1190-AA79]**

*Regulatory Plan:* This entry is Seq. No. 121 in part II of this issue of the **Federal Register**.

RIN: 1190-AA79

[FR Doc. 2023-02029 Filed 2-21-23; 8:45 am]

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# FEDERAL REGISTER

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Part XII

Department of Labor

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Semiannual Regulatory Agenda

**DEPARTMENT OF LABOR****Office of the Secretary****20 CFR Chs. I, IV, V, VI, VII, and IX****29 CFR Subtitle A and Chs. II, IV, V, XVII, and XXV****30 CFR Ch. I****41 CFR Ch. 60****48 CFR Ch. 29****Semiannual Agenda of Regulations****AGENCY:** Office of the Secretary, Labor.**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** The internet has become the means for disseminating the entirety of the Department of Labor's semiannual regulatory agenda. However, the Regulatory Flexibility Act requires publication of a regulatory flexibility agenda in the **Federal Register**. This

**Federal Register** Notice contains the regulatory flexibility agenda.

**FOR FURTHER INFORMATION CONTACT:**

Albert T. Herrera, Director, Office of Regulatory and Programmatic Policy, Office of the Assistant Secretary for Policy, U.S. Department of Labor, 200 Constitution Avenue NW, Room S-2312, Washington, DC 20210; (202) 693-5959.

**Note:** Information pertaining to a specific regulation can be obtained from the agency contact listed for that particular regulation.

**SUPPLEMENTARY INFORMATION:** Executive Order 12866 requires the semiannual publication of an agenda of regulations that contains a listing of all the regulations the Department of Labor expects to have under active consideration for promulgation, proposal, or review during the coming one-year period. The entirety of the Department's semiannual agenda is available online at [www.reginfo.gov](http://www.reginfo.gov).

The Regulatory Flexibility Act (5 U.S.C. 602) requires DOL to publish in the **Federal Register** a regulatory

flexibility agenda. The Department's Regulatory Flexibility Agenda, published with this notice, includes only those rules on its semiannual agenda that are likely to have a significant economic impact on a substantial number of small entities; and those rules identified for periodic review in keeping with the requirements of section 610 of the Regulatory Flexibility Act. Thus, the regulatory flexibility agenda is a subset of the Department's semiannual regulatory agenda. The Department's Regulatory Flexibility Agenda does not include section 610 items at this time.

All interested members of the public are invited and encouraged to let departmental officials know how our regulatory efforts can be improved and are invited to participate in and comment on the review or development of the regulations listed on the Department's agenda.

**Martin J. Walsh,**  
*Secretary of Labor.*

**WAGE AND HOUR DIVISION—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
361 .....	Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees ( <b>Reg Plan Seq No. 133</b> ).	1235-AA39
362 .....	Employee or Independent Contractor Classification Under the Fair Labor Standards Act .....	1235-AA43

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

**EMPLOYMENT AND TRAINING ADMINISTRATION—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
363 .....	Temporary Employment of H-2B Foreign Workers in the United States .....	1205-AB93
364 .....	Improving Protections For Workers in Temporary Agricultural Employment in the United States .....	1205-AC12

**EMPLOYEE BENEFITS SECURITY ADMINISTRATION—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
365 .....	Implement SECURE Act and Related Revisions to Employee Benefit Plan Annual Reporting on the Form 5500.	1210-AB97

**EMPLOYEE BENEFITS SECURITY ADMINISTRATION—COMPLETED ACTIONS**

Sequence No.	Title	Regulation Identifier No.
366 .....	Requirements Related to Surprise Billing, Part 1 .....	1210-AB99
367 .....	Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights .....	1210-AC03

**OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PRERULE STAGE**

Sequence No.	Title	Regulation Identifier No.
368 .....	Process Safety Management and Prevention of Major Chemical Accidents .....	1218-AC82

## OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PRERULE STAGE—Continued

Sequence No.	Title	Regulation Identifier No.
369 .....	Prevention of Workplace Violence in Health Care and Social Assistance ( <b>Reg Plan Seq No. 141</b> ) .....	1218–AD08

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
370 .....	Infectious Diseases ( <b>Reg Plan Seq No. 143</b> ) .....	1218–AC46
371 .....	Communication Tower Safety .....	1218–AC90
372 .....	Emergency Response .....	1218–AC91
373 .....	Tree Care Standard .....	1218–AD04

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## DEPARTMENT OF LABOR (DOL)

## Wage and Hour Division (WHD)

## Proposed Rule Stage

**361. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees [1235–AA39]**

*Regulatory Plan:* This entry is Seq. No. 133 in part II of this issue of the **Federal Register**.

*RIN:* 1235–AA39

**362. • Employee or Independent Contractor Classification Under the Fair Labor Standards Act [1235–AA43]**

*Legal Authority:* 52 Stat. 1060, as amended; 29 U.S.C. 201–219

*Abstract:* On January 7, 2021, the Department of Labor (Department) published a final rule on independent contractor status under the Fair Labor Standards Act (FLSA). *See* 86 FR 1168 (2021 IC Rule). The Department subsequently published final rules to delay and withdraw the 2021 IC Rule on March 4, 2021, and May 6, 2021, respectively. *See* 86 FR 12535 (Delay Rule); 86 FR 24303 (Withdrawal Rule). On March 14, 2022, a district court in the Eastern District of Texas vacated the Department's Delay and Withdrawal Rules, concluding that the 2021 IC Rule became effective as of March 8, 2021. The Department continues to believe that the 2021 IC Rule does not fully comport with the FLSA's text and purpose as interpreted by courts and has proposed to rescind the 2021 IC rule and set forth an analysis for determining employee or independent contractor status under the Act that is more consistent with existing judicial precedent and the Department's longstanding guidance prior to the 2021 IC rule.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/13/22	87 FR 62218
NPRM Comment Period Extended.	10/26/22	87 FR 64749
NPRM Comment Period Extended End.	12/13/22	
Final Rule .....	05/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Amy DeBisschop, Director of the Division of Regulations, Legislation, and Interpretation, Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW, FP Building, Room S–3502, Washington, DC 20210, *Phone:* 202 693–0406.

*RIN:* 1235–AA43

## DEPARTMENT OF LABOR (DOL)

## Employment and Training Administration (ETA)

## Proposed Rule Stage

**363. Temporary Employment of H–2B Foreign Workers in the United States [1205–AB93]**

*Legal Authority:* 8 U.S.C. 1184; 8 U.S.C. 1103; sec. 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii); 8 U.S.C. 1103(a)(6), 1182(m), (n) and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238; 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e); Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182

note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; . . .

*Abstract:* The United States Department of Labor's (DOL) Employment and Training Administration and Wage and Hour Division, and the United States Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services, are jointly proposing to update the H–2B visa program regulations at 20 CFR part 655, subpart A, the related prevailing wage regulations at 20 CFR 656, and 8 CFR 214 governing the certification of the employment of H–2B non-immigrant workers in temporary or seasonal non-agricultural employment and the enforcement of the obligations applicable to employers of such nonimmigrant workers and U.S. workers in corresponding employment. Specifically, the Notice of Proposed Rulemaking (NPRM) would update the process by which employers seeking to employ H–2B workers would obtain temporary certification from DOL for use in petitioning DHS to employ a nonimmigrant worker in H–2B status. The updates would also establish standards and procedures for employers seeking to hire foreign temporary non-agricultural workers for certain itinerant job opportunities, including entertainers, tree planting, and utility vegetation management.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Brian Pasternak, Administrator, Department of Labor, Employment and Training Administration, 200 Constitution

Avenue NW, Office of Foreign Labor Certification, Room N-5311, FP Building, Washington, DC 20210, Phone: 202 693-8200, Email: [pasternak.brian@dol.gov](mailto:pasternak.brian@dol.gov).  
RIN: 1205-AB93

**364. • Improving Protections for Workers in Temporary Agricultural Employment in the United States [1205-AC12]**

*Legal Authority:* 8 U.S.C. 1188, 29 U.S.C. 49 *et seq.*

*Abstract:* The Department of Labor's (DOL) Employment and Training Administration and Wage and Hour Division propose to amend regulations to improve working conditions and protections for workers engaged in temporary agricultural employment in the United States; and strengthen protections in the recruitment, job order clearance, and oversight processes. The proposed regulatory changes involve the Employment Service and the H-2A non-immigrant visa program at 29 CFR part 501 and 20 CFR parts 651, 653, 654, 655, and 658.

The Department has identified a need to strengthen and clarify protections for all temporary agricultural workers, including U.S. workers and workers employed through the H-2A temporary agricultural program. The H-2A temporary agricultural program allows agricultural employers to perform agricultural labor or services of a temporary or seasonal nature so long as there are not sufficient able, willing, and qualified U.S. workers to perform the work and the employment of H-2A workers does not adversely affect the wages and working conditions of similarly employed workers in the United States. The use of the H-2A program has grown substantially in recent years and the Department is committed to protecting agricultural workers in light of their significant vulnerabilities.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Brian Pasternak, Administrator, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Office of Foreign Labor Certification, Room N-5311, FP Building, Washington, DC 20210, Phone: 202 693-8200, Email: [pasternak.brian@dol.gov](mailto:pasternak.brian@dol.gov).  
RIN: 1205-AC12

**DEPARTMENT OF LABOR (DOL)**

*Employee Benefits Security Administration (EBSA)*

Final Rule Stage

**365. Implement Secure Act and Related Revisions to Employee Benefit Plan Annual Reporting on the Form 5500 [1210-AB97]**

*Legal Authority:* 29 U.S.C. 1021, 1023-24, 1026-27, and 1029-30; 29 U.S.C. 1135

*Abstract:* This regulatory action would implement SECURE Act and related changes to the Form 5500 Annual Return/Report of Employee Benefit Plan and annual reporting regulations under ERISA.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/15/21	86 FR 51284
NPRM Comment Period End.	11/01/21	
Notice of Proposed Forms Revision.	09/15/21	86 FR 51488
Notice of Proposed Forms Revision Comment Period End.	11/01/21	
Final Rule Phase I.	12/29/21	86 FR 73976
Final Rule Phase II.	05/23/22	87 FR 31133
Final Rule Phase III.	12/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jeffrey J. Turner, Deputy Director, Office of Regulations and Interpretations, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, FP Building, Room N-5655, Washington, DC 20210, Phone: 202 693-8500.

RIN: 1210-AB97

**DEPARTMENT OF LABOR (DOL)**

*Employee Benefits Security Administration (EBSA)*

Completed Actions

**366. Requirements Related to Surprise Billing, Part 1 [1210-AB99]**

*Legal Authority:* Pub. L. 116-260, Division BB, Title I and Title II

*Abstract:* This interim final rule with comment would implement certain protections against surprise medical bills under the No Surprises Act, including requirements on group health plans, issuers offering group or

individual health insurance coverage, providers, facilities, and providers of air ambulance services.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	07/13/21	86 FR 36872
Interim Final Rule Comment Period End.	09/07/21	
Interim Final Rule Effective (Applicability Date 1/1/2022).	09/13/21	
Final Rule .....	08/26/22	87 FR 52618
Final Rule Effective.	10/25/22	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*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](mailto:rivers.amber@dol.gov).  
RIN: 1210-AB99

**367. Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights [1210-AC03]**

*Legal Authority:* 29 U.S.C. 1104; 29 U.S.C. 1135

*Abstract:* This rulemaking implements Executive Order 13990 of January 20, 2021, titled Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, and Executive Order 14030 of May 20, 2021, titled Climate-Related Financial Risks. Among other things, these Executive Orders direct Federal agencies to review existing regulations promulgated, issued, or adopted between January 20, 2017, and January 20, 2021, that are or may be inconsistent with, or present obstacles to, the policies set forth in section 1 of the orders 86 FR 7037 (January 25, 2021); 86 FR 27967 (May 25, 2021). Such policies include the promotion and protection of public health and the environment and ensuring that agency activities are guided by the best science and protected by processes that ensure the integrity of Federal decision-making, and to advance consistent, clear, intelligible, comparable, and accurate disclosure of climate-related financial risk, including both physical and transition risks. Section 2 of Executive Order 13990 provides that for any such regulatory actions identified by the agencies, the heads of agencies shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions. Section 4

of Executive Order 14030 directs the Secretary of Labor to consider publishing, by September 2021, for notice and comment a proposed rule to suspend, revise, or rescind “Financial Factors in Selecting Plan Investments,” 85 FR 72846 (November 13, 2020), and “Fiduciary Duties Regarding Proxy Voting and Shareholder Rights,” 85 FR 81658 (December 16, 2020). Following review, the Department of Labor’s Employee Benefits Security Administration proposed amendments to these rules on October 14, 2021. 86 FR 57272.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/14/21	86 FR 57272
NPRM Comment Period End.	12/13/21	
Final Rule .....	12/01/22	87 FR 73822
Final Rule Effective.	01/30/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jeffrey J. Turner, Deputy Director, Office of Regulations and Interpretations, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, FP Building, Room N-5655, Washington, DC 20210, *Phone:* 202 693-8500.

*RIN:* 1210-AC03

## DEPARTMENT OF LABOR (DOL)

*Occupational Safety and Health Administration (OSHA)*

Prerule Stage

### 368. Process Safety Management and Prevention of Major Chemical Accidents [1218-AC82]

*Legal Authority:* 29 U.S.C. 655; 29 U.S.C. 657

*Abstract:* The Occupational Safety and Health Administration (OSHA) issued a Request for Information (RFI) on December 9, 2013 (78 FR 73756). The RFI identified issues related to modernization of the Process Safety Management standard and related standards necessary to meet the goal of preventing major chemical accidents. OSHA completed SBREFA in August 2016.

*Timetable:*

Action	Date	FR Cite
Request for Information (RFI).	12/09/13	78 FR 73756
RFI Comment Period Extended.	03/07/14	79 FR 13006

Action	Date	FR Cite
RFI Comment Period Extended End.	03/31/14	
Initiate SBREFA .. SBREFA Report Completed.	06/08/15 08/01/16	
Stakeholder Meeting.	10/12/22	
Analyze Comments.	11/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*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-AC82

### 369. Prevention of Workplace Violence in Health Care and Social Assistance [1218-AD08]

*Regulatory Plan:* This entry is Seq. No. 141 in part II of this issue of the **Federal Register**.

*RIN:* 1218-AD08

## DEPARTMENT OF LABOR (DOL)

*Occupational Safety and Health Administration (OSHA)*

Proposed Rule Stage

### 370. Infectious Diseases [1218-AC46]

*Regulatory Plan:* This entry is Seq. No. 143 in part II of this issue of the **Federal Register**.

*RIN:* 1218-AC46

### 371. Communication Tower Safety [1218-AC90]

*Legal Authority:* 29 U.S.C. 655(b); 5 U.S.C. 609

*Abstract:* While the number of employees engaged in the communication tower industry remains small, the fatality rate is very high. Over the past 20 years, this industry has experienced an average fatality rate that greatly exceeds that of the construction industry. Due to recent FCC spectrum auctions and innovations in cellular technology, there will be a very high level of construction activity taking place on communication towers over the next few years. A similar increase in the number of construction projects needed to support cellular phone coverage triggered a spike in fatality and injury rates years ago. Based on information collected from an April

2015 Request for Information (RFI), OSHA concluded that current OSHA requirements such as those for fall protection and personnel hoisting, may not adequately cover all hazards of communication tower construction and maintenance activities. OSHA will use information collected from a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel to identify effective work practices and advances in engineering technology that would best address industry safety and health concerns. The Panel carefully considered the issue of the expansion of the rule beyond just communication towers. OSHA will continue to consider also covering structures that have telecommunications equipment on or attached to them (e.g., buildings, rooftops, water towers, billboards).

*Timetable:*

Action	Date	FR Cite
Request for Information (RFI).	04/15/15	80 FR 20185
RFI Comment Period End.	06/15/15	
Initiate SBREFA ..	01/04/17	
Initiate SBREFA ..	05/31/18	
Complete SBREFA.	10/11/18	
NPRM .....	03/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Scott Ketcham, Director, Directorate of Construction, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, Room N-3468, FP Building, Washington, DC 20210, *Phone:* 202 693-2020, *Fax:* 202 693-1689, *Email:* ketcham.scott@dol.gov.

*RIN:* 1218-AC90

### 372. Emergency Response [1218-AC91]

*Legal Authority:* 29 U.S.C. 655(b); 29 U.S.C. 657; 5 U.S.C. 609

*Abstract:* OSHA currently regulates aspects of emergency response and preparedness; some of these standards were promulgated decades ago, and none were designed as comprehensive emergency response standards. Consequently, they do not address the full range of hazards or concerns currently facing emergency responders, and other workers providing skilled support, nor do they reflect major changes in performance specifications for protective clothing and equipment. The agency acknowledges that current OSHA standards also do not reflect all the major developments in safety and health practices that have already been accepted by the emergency response community and incorporated into

industry consensus standards. OSHA is considering updating these standards with information gathered through an RFI and public meetings.

*Timetable:*

Action	Date	FR Cite
Stakeholder Meetings.	07/30/14	
Convene NACOSH Workgroup.	09/09/15	
NACOSH Review of Workgroup Report.	12/14/16	
Initiate SBREFA ..	08/02/21	
Finalize SBREFA	12/02/21	
NPRM .....	09/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Andrew Levinson, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, FP Building, Room N–

3718, Washington, DC 20210, *Phone:* 202–693–1950, *Email:* levinson.andrew@dol.gov.  
*RIN:* 1218–AC91

**373. Tree Care Standard [1218–AD04]**

*Legal Authority:* Not Yet Determined  
*Abstract:* There is no OSHA standard for tree care operations; the agency currently applies a patchwork of standards to address the serious hazards in this industry. The tree care industry previously petitioned the agency for rulemaking and OSHA issued an ANPRM (September 2008). OSHA completed a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel in May 2020, collecting information from affected small entities on a potential standard, including the scope of the standard, effective work practices, and arboricultural specific uses of equipment to guide OSHA in developing a rule that would best address industry safety and health concerns. Tree care continues to be a high-hazard industry.

*Timetable:*

Action	Date	FR Cite
Stakeholder Meeting.	07/13/16	
Initiate SBREFA ..	01/10/20	
Complete SBREFA.	05/22/20	
NPRM .....	05/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*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–AD04

[FR Doc. 2023–02030 Filed 2–21–23; 8:45 am]

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Part XIII

Department of Transportation

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Semiannual Regulatory Agenda

**DEPARTMENT OF TRANSPORTATION****Office of the Secretary****14 CFR Chs. I–III****23 CFR Chs. I–III****33 CFR Chs. I and IV****46 CFR Chs. I–III****48 CFR Ch. 12****49 CFR Subtitle A, Chs. I–VI, and Chs. X–XII**

[DOT–OST–1999–5129]

**Department Regulatory and Deregulatory Agenda; Semiannual Summary****AGENCY:** Office of the Secretary, DOT.**ACTION:** Unified Agenda of Federal Regulatory and Deregulatory Actions (Regulatory Agenda).

**SUMMARY:** The Regulatory Agenda is a semiannual summary of all current and projected rulemakings, reviews of existing regulations, and completed actions of the Department of Transportation. The Agenda provides the public information about the Department of Transportation's planned regulatory activity for the next 12 months. This information enables the public to participate in the Department's regulatory process. The public is encouraged to submit comments on any aspect of this Agenda.

**FOR FURTHER INFORMATION CONTACT:****General**

Please direct all general comments and inquiries on the Agenda to Daniel Cohen, Assistant General Counsel for Regulation, Office of the General Counsel, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; (202) 366–4702.

**Specific**

Please direct all comments and inquiries relative to specific items in the Agenda to the individual listed for the regulation or the general rulemaking contact person for the operating administration in Appendix B.

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Appendix D—Review Plans for Section 610 and Other Requirements**SUPPLEMENTARY INFORMATION:****Background**

The U.S. Department of Transportation (Department or DOT) issues regulations to make our transportation system safer for all people, 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.

To achieve these goals in accordance with Executive Order 12866, “Regulatory Planning and Review,” (58 FR 51735; Oct. 4, 1993), the Department prepares a semiannual Agenda. The Agenda summarizes all current and projected rulemakings, reviews of existing regulations, and completed actions of the Department. These are matters on which action has begun or is projected to begin during the next 12 months or for which action has been completed since the publication of the last Agenda in the fall of 2021.

The Department has issued the National Roadway Safety Strategy, which outlines the Department's comprehensive plan to significantly reduce serious injuries and deaths on our Nation's highways, roads, and streets. This is the first step in the ambitious long-term goal of reaching zero roadway fatalities. The Department is currently working on a number of rulemakings to help achieve this goal. For example, NHTSA is working to facilitate the deployment of new technology, such as automatic emergency braking systems, in certain vehicles to improve the safety of our Nation's roads.

The Department is also moving to rapidly implement the provisions of the Bipartisan Infrastructure Law (BIL).<sup>1</sup> For example, FHWA is currently working on a BIL-required rulemaking to establish minimum standards and requirements for the implementation of a program that will result in a national network of 500,000 electric vehicle charging stations by 2030.

To help address climate change, the Department is working on rulemakings such as a NHTSA rule to enhance fuel economy for trucks and heavy-duty engines and vehicles. This rulemaking is in addition to other recently-completed NHTSA rules that, in

aggregate, establish more stringent fuel economy standards. Similarly, PHMSA is preparing to enhance requirements for detecting and repairing leaks on new and existing natural gas distribution, gas transmission, and gas gathering pipelines.

The Department is also developing rules increasing access to our transportation system for individuals with disabilities and thereby advancing equity in transportation. For example, OST is developing a rulemaking to enhance the safety of air travel for individuals who use wheelchairs and rely on the physical assistance of airline personnel or contractors.

The Department is also working on several consumer protection regulations. For example, OST is developing a rule that would amend DOT's aviation consumer protection program to ensure that, at the time of ticket purchase, consumers have ancillary fee information, including baggage and change fees.

**Explanation of Information in the Agenda**

An Office of Management and Budget memorandum, dated September 2, 2022, establishes the format for this Agenda.

First, the Agenda is divided by initiating office. Then, the Agenda is divided into five categories: (1) prerule stage; (2) proposed rule stage; (3) final rule stage; (4) long-term actions; and (5) completed actions. For each entry, the Agenda provides the following information: (1) its “significance”; (2) a short, descriptive title; (3) its legal basis; (4) the related regulatory citation in the Code of Federal Regulations; (5) any legal deadline and, if so, for what action (e.g., NPRM, final rule); (6) an abstract; (7) a timetable, including the earliest expected date for when a rulemaking document may publish; (8) whether the rulemaking will affect small entities and/or levels of Government and, if so, which categories; (9) whether a Regulatory Flexibility Act (RFA) analysis is required (for rules that would have a significant economic impact on a substantial number of small entities); (10) a listing of any analyses an office will prepare or has prepared for the action (with minor exceptions, DOT requires an economic analysis for all its rulemakings); (11) an agency contact office or official who can provide further information; (12) a Regulation Identifier Number (RIN) assigned to identify an individual rulemaking in the Agenda and facilitate tracing further action on the issue; (13) whether the action is subject to the Unfunded Mandates Reform Act; (14) whether the action is subject to the Energy Act; and

<sup>1</sup> Infrastructure Investment and Jobs Act, Public Law 117–58 (2021).



(15) whether the action is major under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act.

To keep the operational requirements, current for nonsignificant regulations issued routinely and frequently as a part of an established body of technical requirements (such as the Federal Aviation Administration's Airspace Rules), we only include the general category of the regulations, the identity of a contact office or official, and an indication of the expected number of regulations; we do not list individual regulations.

In the "Timetable" column, we use abbreviations to indicate the documents being considered. ANPRM stands for Advance Notice of Proposed Rulemaking, SNPRM for Supplemental Notice of Proposed Rulemaking, and NPRM for Notice of Proposed Rulemaking. Listing a future date in this column does not mean we have decided to issue a document; it is the earliest date on which a rulemaking document may publish. In addition, these dates are based on current schedules. Information received after the issuance of this Agenda could result in a decision not to take regulatory action or in changes to proposed publication dates. For example, the need for further evaluation could result in a later publication date; evidence of a greater need for the regulation could result in an earlier publication date.

Finally, a dot (•) preceding an entry indicates that the entry appears in the Agenda for the first time.

The internet is the basic means for disseminating the Unified Agenda. The complete Unified Agenda is available online at [www.reginfo.gov](http://www.reginfo.gov) in a format that offers users a greatly enhanced ability to obtain information from the Agenda database. However, a portion of the Agenda is published in the **Federal Register** because the Regulatory Flexibility Act (5 U.S.C. 602) mandates publication for the regulatory flexibility agenda.

Accordingly, DOT's printed Agenda entries include only:

1. The agency's Agenda preamble.
2. Rules that are in the agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and
3. Any rules that the agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required

by the Regulatory Flexibility Act's Agenda requirements. These elements are: Sequence Number; Title; Section 610 Review, if applicable; Legal Authority; Abstract; Timetable; Regulatory Flexibility Analysis Required; Agency Contact; and Regulation Identifier Number (RIN). Additional information (for detailed list, see section heading "Explanation of Information on the Agenda") on these entries is available in the Unified Agenda published on the internet.

## Request for Comments

### General

DOT's Agenda is intended primarily for the use of the public. Since its inception, the Department has made modifications and refinements that provide the public with more helpful information, as well as making the Agenda easier to use. We would like you, the public, to make suggestions or comments on how the Agenda could be further improved.

### Regulatory Flexibility Act

The Department is interested in obtaining information on requirements that have a "significant economic impact on a substantial number of small entities" and, therefore, must be reviewed under the Regulatory Flexibility Act. If you have any suggested regulations, please submit them to the Department, along with your explanation of why they should be reviewed.

In accordance with the Regulatory Flexibility Act, comments are specifically invited on regulations that we have targeted for review under section 610 of the Act. The phrase (sec. 610 Review) appears at the end of the title for these reviews. Please see appendix D for the Department's section 610 review plans.

### Consultation With State, Local, and Tribal Governments

Executive Orders 13132 and 13175 require the Department to develop a process to ensure "meaningful and timely input" by State, local, and Tribal officials in the development of regulatory policies that have federalism or tribal implications. These policies are defined in the Executive orders to include regulations that have "substantial direct effects" on States or Indian Tribes, on the relationship between the Federal Government and them, or on the distribution of power and responsibilities between the Federal Government and various levels of Government or Indian tribes. Therefore, we encourage State and local

Governments or Indian Tribes to provide us with information about how the Department's rulemakings impact them.

## Purpose

The Department is publishing this regulatory Agenda in the **Federal Register** to share with interested members of the public the Department's preliminary expectations regarding its future regulatory actions. This should enable the public to be more aware of the Department's regulatory activity and should result in more effective public participation. This publication in the **Federal Register** does not impose any binding obligation on the Department or any of the offices within the Department about any specific item on the Agenda. Regulatory action, in addition to the items listed, is not precluded.

Dated: January 11, 2023.

**John Putnam,**

*General Counsel, Department of Transportation.*

## Appendix A—Instructions for Obtaining Copies of Regulatory Documents

To obtain a copy of a specific regulatory document in the Agenda, you should communicate directly with the contact person listed with the regulation at the address below. We note that most, if not all, such documents, including the Semiannual Regulatory Agenda, are available through the internet at <http://www.regulations.gov>. See appendix C for more information.

## Appendix B—General Rulemaking Contact Persons

The following is a list of persons who can be contacted within the Department for general information concerning the rulemaking process within the various operating administrations.

FAA—Brandon Roberts, Executive Director, Office of Rulemaking, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267-9677.

FHWA—Jennifer Outhouse, Office of Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366-0761.

FMCSA—Crystal Williams, Regulatory Ombudsman, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366-2904.

NHTSA—Terrence Sommers, Office of Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366-7577.

FRA—Amanda Maizel, Office of Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 493-8014.

FTA—Chaya Koffman, Office of Chief Counsel, 1200 New Jersey Avenue E, Washington, DC 20590; telephone (202) 366-3101.

GLS—Carrie Mann Lavigne, Chief Counsel, 180 Andrews Street, Massena, NY 13662; telephone (315) 764–3200.

PHMSA—Robert Ross, Office of Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 768–1365.

MARAD—Gabriel Chavez, Office of Chief Counsel, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–2621.

OST—Daniel Cohen, Assistant General Counsel for Regulation, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–4723.

Appendix C—Public Rulemaking Dockets

All comments submitted via the internet are submitted through <http://www.regulations.gov>. This website allows the public to search, view, download, and comment on all Federal agency rulemaking documents in one central online system. The above referenced internet address also allows the public to sign up to receive notification when certain documents are placed in the dockets.

Appendix D—Review Plans for Section 610 and Other Requirements

The Department of Transportation has long recognized the importance of regularly reviewing its existing regulations to determine whether they need to be revised or revoked. Our Regulatory Policies and Procedures require such reviews. DOT also has responsibilities under section 610 of the Regulatory Flexibility Act, Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821 (January 18, 2011) to conduct such reviews. We are committed to continuing our reviews of existing rules and, if it is needed, will initiate rulemaking actions based on these reviews. Generally, each DOT operating administration divides its rules into 10 different groups and plans to analyze one group each year. In each Fall Agenda, the operating administration will publish the results of the analyses it has completed during the previous year.

Appendix D—Review Plans for Section 610 and Other Requirements

Part I—The Plan

General

The Department of Transportation has long recognized the importance of regularly reviewing its existing regulations to determine whether they need to be revised or revoked. Our Regulatory Policies and Procedures require such reviews. DOT also has responsibilities under section 610 of the Regulatory Flexibility Act, Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” 76 FR

3821 (January 18, 2011) to conduct such reviews. We are committed to continuing our reviews of existing rules and, if it is needed, will initiate rulemaking actions based on these reviews. The Department began a new 10-year review cycle with the Fall 2018 Agenda.

Section 610 Review Plan

Section 610 requires that we conduct reviews of rules that: (1) have been published within the last 10 years; and (2) have a “significant economic impact on a substantial number of small entities” (SEISNOSE). It also requires that we publish in the **Federal Register** each year a list of any such rules that we will review during the next year. The Office of the Secretary and each of the Department’s Operating Administrations have a 10-year review plan. These reviews comply with section 610 of the Regulatory Flexibility Act.

Changes to the Review Plan

Some reviews may be conducted earlier than scheduled. For example, events, such as accidents, may result in the need to conduct earlier reviews of some rules. Other factors may also result in the need to make changes; for example, we may make changes in response to public comment on this plan or in response to a presidentially mandated review. If there is any change to the review plan, we will note the change in the following Agenda. For any section 610 review, we will provide the required notice prior to the review.

Part II—The Review Process

The Analysis

Generally, the agencies have divided their rules into 10 different groups and plan to analyze one group each year. For purposes of these reviews, a year will coincide with the fall-to-fall schedule for publication of the Agenda. Most agencies provide historical information about the reviews that have occurred over the past 10 years. Thus, Year 1 (2018) begins in the fall of 2018 and ends in the fall of 2019; Year 2 (2019) begins in the fall of 2019 and ends in the fall of 2020, and so on. The exception to this general rule is the FAA, which provides information about the reviews it completed for this year and prospective information about the reviews it intends to complete in the next 10 years. Thus, for FAA Year 1 (2017) begins in the fall of 2017 and ends in the fall of 2018; Year 2 (2018) begins in the fall of 2018 and ends in the fall of 2019, and so on. We request public comment on the timing of the reviews. For example, is there a reason for scheduling an analysis and review for a particular rule earlier than we have? Any comments concerning the plan or analyses should be submitted to the regulatory contacts listed in appendix B, General Rulemaking Contact Persons.

Section 610 Review

The agency will analyze each of the rules in each year’s group to determine whether any rule has a SEISNOSE and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. The level of analysis will, of course, depend on the nature of the rule and its applicability. Publication of agencies’ section 610 analyses listed each fall in this Agenda provides the public with notice and an opportunity to comment consistent with the requirements of the Regulatory Flexibility Act. We request that public comments be submitted to the Department early in the analysis year concerning the small entity impact of the rules to help us in making our determinations.

In each Fall Agenda, the agency will publish the results of the analyses it has completed during the previous year. For rules that had a negative finding on SEISNOSE, we will give a short explanation (e.g., “these rules only establish petition processes that have no cost impact” or “these rules do not apply to any small entities”). For parts, subparts, or other discrete sections of rules that do have a SEISNOSE, we will announce that we will be conducting a formal section 610 review during the following 12 months. At this stage, DOT will add an entry to the Agenda in the pre-rulemaking section describing the review in more detail. We also will seek public comment on how best to lessen the impact of these rules and provide a name or docket to which public comments can be submitted. In some cases, the section 610 review may be part of another unrelated review of the rule. In such a case, we plan to clearly indicate which parts of the review are being conducted under section 610.

Other Reviews

The agency will also examine the specified rules to determine whether any other reasons exist for revising or revoking the rule or for rewriting the rule in plain language. In each Fall Agenda, the agency will also publish information on the results of the examinations completed during the previous year.

Part III—List of Pending Section 610 Reviews

The Agenda identifies the pending DOT section 610 Reviews by inserting “(Section 610 Review)” after the title for the specific entry. For further information on the pending reviews, see the Agenda entries at [www.reginfo.gov](http://www.reginfo.gov). For example, to obtain a list of all entries that are in section 610 Reviews under the Regulatory Flexibility Act, a user would select the desired responses on the search screen (by selecting “advanced search”) and, in effect, generate the desired “index” of reviews.

Office of the Secretary

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1 .....	49 CFR parts 91 through 99 ..... 14 CFR parts 200 through 212.	2018	2019

Year	Regulations to be reviewed	Analysis year	Review year
	48 CFR parts 1201 through 1224.		
2 .....	48 CFR parts 1227 through 1253 and new parts and subparts .....	2019	2020
3 .....	14 CFR parts 213 through 232 .....	2020	2021
4 .....	14 CFR parts 234 through 254 .....	2021	2022
5 .....	14 CFR parts 255 through 298 and 49 CFR part 40 .....	2022	2023
6 .....	14 CFR parts 300 through 373 .....	2023	2024
7 .....	14 CFR parts 374 through 398 .....	2024	2025
8 .....	14 CFR part 399 and 49 CFR parts 1 through 15 .....	2025	2026
9 .....	49 CFR parts 17 through 28 .....	2026	2027
10 .....	49 CFR parts 29 through 39 and parts 41 through 89 .....	2027	2028

#### Year 10 (Fall 2018) List of Rules Analyzed and Summary of Results

##### 49 CFR part 30—Denial of Public Works Contracts to Suppliers of Goods and Services of Countries that Deny Procurement Market Access to U.S. Contractors

• Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

• General: No changes are needed. These regulations are cost effective and impose the least burden. OST's plain language review of these rules indicates no need for substantial revision.

##### 49 CFR part 31—Program Fraud Civil Remedies

• Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

• General: No changes are needed. These regulations are cost effective and impose the least burden. OST's plain language review of these rules indicates no need for substantial revision.

##### 49 CFR part 37—Transportation Services for Individuals with Disabilities (ADA)

• The U.S. Department of Transportation (DOT) Office of the Secretary (OST), with the assistance of its Operating Administrations, including the Federal Transit Administration (FTA), is in the process of issuing multiple rulemakings that call for changes to the regulatory language in 49 CFR part 37. Specifically, OST is administering a rulemaking titled: "Transportation for Individuals with Disabilities; Service Animals and Technical Corrections" (RIN 2105–AF08) which would propose changes to the definition of "service animal" in 49 CFR part 37.3, and several other technical corrections to outdated provisions, such as that referencing a make and model of a lift that has been out of production for three decades (49 CFR part 37.165(g)). In addition, OST is developing a rulemaking titled "Equitable Access to Transit Facilities" (RIN 2105–AF07) in which DOT would consider requirements for secondary elevators, induction loops, and improvements in wayfinding in transit stations. In conjunction with these pending rulemakings, DOT will need to conduct a section 610 review of this part, and, if appropriate, initiate additional rulemaking(s) to minimize the SEISNOSE, bring the regulation into compliance with statutory requirements, and/or revise the regulation for plain language.

##### 49 CFR part 38—Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles

• The U.S. Department of Transportation (DOT) Office of the Secretary (OST), with the assistance of its Operating Administrations, including the Federal Transit Administration (FTA), is in the process of issuing a rulemaking that calls for changes to the regulatory language in 49 CFR part 38. Specifically, OST is developing a rulemaking titled: "Transportation for Individuals with Disabilities; Adoption of Accessibility Standards for Buses and Vans" (RIN 2105–AF09) in order to consider new standards for accessible buses and vans based on updated accessibility guidelines issued by the U.S. Access Board (USAB) on December 14, 2016. In conjunction with this pending rulemaking, OST will need to conduct a Section 610 review of this part, and, if appropriate, initiate additional rulemaking(s) to minimize the SEISNOSE, bring the regulation into compliance with statutory requirements, and/or revise the regulation for plain language.

##### 49 CFR part 39—Transportation for Individuals with Disabilities: Passenger Vessels

• Section 610: The U.S. Department of Transportation (DOT) Office of the Secretary (OST) conducted a section 610 review of this part and found SEISNOSE. The regulation requires owners and operators of passenger vessels to (1) ensure their vessels and related facilities are accessible; and (2) take steps to accommodate passengers with disabilities. These requirements can entail significant investments from owners and operators of passenger vessels, many of whom qualify as small businesses as defined by the U.S. Small Business Administration. OST plans to explore whether it is appropriate to initiate a rulemaking to revise this regulation to minimize the SEISNOSE.

• General: The definition of "service animal" contained in 49 CFR 39.3 is inconsistent with the amendments made by the Department of Justice (DOJ) on July 23, 2010, (*see* 28 CFR 35.104 and 35.136), as well as the definition under DOT's Air Carrier Access Act regulations (*see* 14 CFR 382.3), as amended on December 10, 2020. The current requirement under 49 CFR 39.3 defines service animals as "any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability." DOJ defines a service animal in terms of "any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including

a physical, sensory, psychiatric, intellectual, or other mental disability" (*see* 28 CFR 35.104) (emphasis added). And under 28 CFR 35.136(i), reasonable modifications in policy and practices must be made where necessary to accommodate miniature horses as service animals. As such, failure to update this regulation will leave the passenger vessel industry subject to accommodating unusual service animals, such as reptiles and primates. On the other hand, updating the definition of "service animal" under 49 CFR 39.3 will ensure consistency across Federal regulations, which is essential to removing the confusion that results for individuals with service animals when different standards apply to different public facilities and modes of transportation. OST has already recognized the need to update the "service animal" definition contained in 49 CFR 37.3 for the aforementioned reasons and is in the process of developing a rulemaking titled: "Transportation for Individuals with Disabilities; Service Animals and Technical Corrections" (RIN 2105–AF08) in order to make the necessary change.

In addition, 49 CFR 39.31 addresses the ability of passenger vessel owners or operators to limit access to or use of their vessels because a passenger has a communicable disease. The regulation permits owners or operators to limit access or use where: (1) a U.S. or international public health authority has determined that persons with a particular condition should not be permitted to travel or should travel only under specified conditions; or (2) an individual has a condition that is both readily transmissible by casual contact in the context of traveling on or using a passenger vessel and has serious health consequences. The regulation provides examples of conditions that passengers may have (*e.g.*, a common cold, HIV/AIDS, SARS, or a norovirus) and the appropriate actions (if any) that passenger vessel owners or operators may take in response. However, the regulation does not address how passenger vessel owners or operators should handle passengers with the novel Coronavirus Disease 2019 (COVID–19). Given the ubiquity of the virus and its likely presence and impact in the future, the regulation should be revised to expressly address COVID–19 in the example section.

As a result, OST will need to conduct a rulemaking to bring this regulation into compliance with the statutory requirements and to bring consistency to the regulatory regime governing different modes of transportation. OST's plain language review

of this regulation indicates no need for substantial revision.

It is also worth noting that the U.S. Access Board (USAB) is in the process of developing guidelines under the Americans with Disabilities Act (ADA) for access to ferries, cruise ships, excursion boats, and other large passenger vessels. Those guidelines have not been finalized yet, however, and OST proposes incorporating only final guidelines into DOT's regulations.

#### 49 CFR part 71—Standard Time Zone Boundaries

- Section 610: OST has reviewed these regulations and found no SEISNOSE.

- General: OST has reviewed these regulations and found that some nonsubstantive technical corrections are needed. OST is exploring initiating a rulemaking to make these corrections.

#### 49 CFR part 79—Medals of Honor

- Section 610: The U.S. Department of Transportation (DOT) Office of the Secretary (OST) conducted a Section 610 review of this part and found no SEISNOSE.

- General: No changes are needed. These regulations are cost effective and impose the least burden. OST's plain language review of these rules indicates no need for substantial revision.

#### Year 1 (Fall 2018) List of Rules That Are Under Ongoing Analysis

- Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

- General: Since the rule was enacted, the DOT Operating Administrations have changed. As a result, the agencies listed at 49 CFR 92.5(g)—Definitions should be revised to:

(g) *DOT operating element* (see 49 CFR 1.3) means a DOT Operating Administration including—

- (1) The Office of the Secretary.
- (2) Federal Aviation Administration.
- (3) Federal Highway Administration.
- (4) Federal Railroad Administration.
- (5) National Highway Traffic Safety Administration.
- (6) Office of the Inspector General.
- (7) St. Lawrence Seaway Development Corporation.

- (8) Maritime Administration.

OST will be conducting a rulemaking to make these revisions. These regulations are cost effective and impose the least burden. OST's plain language review of these rules indicates no need for substantial revision.

#### 49 CFR part 93—Aircraft Allocation

#### 49 CFR part 98—Enforcement of Restrictions on Post-Employment Activities

- Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

- General: Since the rule was enacted, the U.S. Department of Transportation's organizational structure changed, and as a result the list of DOT Operating Administrations (OAs) listed in 49 CFR 98.2 must be updated to reflect the current listing of DOT OAs. The following changes are needed in 49 CFR 89.2(a): (1) references to the U.S. Coast Guard (at 49 CFR 98.2(a)(1)), Urban Mass Transportation Administration

(at 49 CFR 98.2(a)(6)), and Research and Special Programs Administration (at 49 CFR 98.2(a)(8)) should be deleted; (2) reference to the Saint Lawrence Seaway Development Corporation at 49 CFR 98.2(a)(7) should be changed to the Great Lakes Saint Lawrence Seaway Development Corporation; and (3) references to the Federal Motor Carrier Safety Administration, Federal Transit Administration, and Pipeline and Hazardous Materials Safety Administration should be added. In addition, since the rule was enacted, the title of the Assistant General Counsel for Environmental, Civil Rights, and General Law has been updated to the Assistant General Counsel for General Law, so the following changes are needed in 49 CFR 98.3 and 98.4: references to the Assistant General Counsel for Environmental, Civil Rights, and General Law should be updated to the Assistant General Counsel for General Law. OST's plain language review of these rules indicates no need for substantial revision.

#### 49 CFR part 99—Employee Responsibilities and Conduct

- Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

- General: No changes are needed. These regulations are cost effective and impose the least burden. OST's plain language review of these rules indicates no need for substantial revision.

#### 14 CFR part 200—Definitions and Instructions

#### 14 CFR part 201—Air Carrier Authority under Subtitle VII of Title 49 of the United States Code [Amended]

#### 14 CFR part 203—Waiver of Warsaw Convention Liability Limits and Defenses

#### 14 CFR part 204—Data to Support Fitness Determinations

#### 14 CFR part 205—Aircraft Accident Liability Insurance

#### 14 CFR part 206—Certificates of Public Convenience and Necessity: Special Authorizations and Exemptions

#### 14 CFR part 207—Charter Trips by U.S. Scheduled Air Carriers

#### 14 CFR part 208—Charter Trips by U.S. Charter Air Carriers

#### 14 CFR part 211—Applications for Permits to Foreign Air Carriers

#### 14 CFR part 212—Charter Rules for U.S. and Foreign Direct Air Carriers

#### 48 CFR part 1201—Federal Acquisition Regulations System

#### 48 CFR part 1202—Definitions of Words and Terms

#### 48 CFR part 1203—Improper Business Practices and Personal Conflicts of Interest

#### 48 CFR part 1204—Administrative Matters

#### 48 CFR part 1205—Publicizing Contract Actions

#### 48 CFR part 1206—Competition Requirements

#### 48 CFR part 1207—Acquisition Planning

#### 48 CFR part 1208–1210—[Reserved]

#### 48 CFR part 1211—Describing Agency Needs

#### 48 CFR part 1213—Simplified Acquisition Procedures

#### 48 CFR part 1214—Sealed Bidding

#### 48 CFR part 1215—Contracting by Negotiation

#### 48 CFR part 1216—Types of Contracts

#### 48 CFR part 1217—Special Contracting Methods

#### 48 CFR part 1219—Small Business Programs

#### 48 CFR part 1222—Application of Labor Laws to Government Acquisitions

#### 48 CFR part 1223—Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace

#### 48 CFR part 1224—Protection of Privacy and Freedom of Information

#### Year 2 (Fall 2019) List of Rules Analyzed and Summary of Results

#### 48 CFR parts 1227 through 1253 and new parts and subparts

#### 48 CFR part 1227—Patents, Data, and Copyrights

#### 48 CFR part 1228—Bonds and Insurance

#### 48 CFR part 1231—Contract Costs Principles and Procedures

#### 48 CFR part 1232—Contract Financing

#### 48 CFR part 1233—Protests, Disputes, and Appeals

#### 48 CFR part 1235—Research and Development Contracting

#### 48 CFR part 1236—Construction and Architect-Engineer Contracts

#### 48 CFR part 1237—Service Contracting

#### 48 CFR part 1239—Acquisition of Information Technology

#### 48 CFR part 1242—Contract Administration and Audit Services

#### 48 CFR part 1245—Government Contracting

#### 48 CFR part 1246—Quality Assurance

#### 48 CFR part 1247—Transportation

#### 48 CFR part 1252—Solicitation Provisions and Contract Clauses

#### 48 CFR part 1253—Forms

DOT determined that updates needed to be made to the regulations identified under Year 2. The regulations were updated as part of RIN 2105-AE26 (Revisions to the Transportation Acquisition Regulations).

#### Year 3 (Fall 2020) List of Rules Analyzed and Summary of Results

#### 14 CFR parts 213 through 232

#### 14 CFR 213—Terms, Conditions and Limitations of Foreign Air Carrier Permits

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

#### 14 CFR 214—Terms, Conditions, and Limitations for Foreign Air Carrier Permits Authorizing Charter Transportation Only

- Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

- General: No changes are needed. These regulations are cost effective and impose the least burden.

#### 14 CFR 215—Use and Change of Names of Air Carriers, Foreign Air Carriers and Commuter Air Carriers

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

#### 14 CFR 216—Commingle of Blind Sector Traffic by Foreign Air Carriers

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

**14 CFR 218—Lease by Foreign Air Carrier or Other Foreign Person of Aircraft with Crew**

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

**14 CFR 221—TARIFFS**

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: OST reviewed and has found that a non-substantive technical correction is necessary and will explore options to make this correction.

**14 CFR 222—Intermodal Cargo Services by Foreign Air Carriers**

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

**14 CFR 223—Free and Reduced-Rate Transportation**

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

**Year 4 (Fall 2021) List of Rules Analyzed and Summary of Results**

**14 CFR parts 234 through 254**

**14 CFR 234—Airline Service Quality Performance Reports**

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: OST's review revealed some outdated references and rule text in Part 234. In addition, improvements to portions of the rule text are needed for plain language. Since the Department last amended Part 234, it has received feedback from airlines and others on the Part 234 requirements addressing airline reporting of cancelled and delayed flights, airline categorization of cancellations and delays, and airline reporting of mishandled baggage data, which the Department is considering. The Department has initiated two rulemakings to evaluate changes to Part 234, "Improving Accuracy of Flight Cancellation Reporting" (2105-AE68) and "Reporting of Data for Mishandled Baggage and Wheelchairs and Scooters Transported in Aircraft Cargo Compartments II" (RIN: 2105-AE77).

**14 CFR 235—Reports by Air Carriers on Incidents Involving Animals During Air Transportation**

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

**14 CFR 240—Inspections of Accounts and Property**

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: Update required to reflect office name change from "Office of Aviation Enforcement and Proceedings" to "Office of Aviation Consumer Protection" in section 240.1(b). Updates should be considered to section 240.1(c) credential language and section 240.2 to permit DOT access to physical facilities of ticket agents: authorization is granted to enter/inspect physical property of carriers (but not explicitly ticket agents) while authorization to copy documents/records extends to both ticket agents and carriers

**14 CFR 241—Uniform System of Accounts and Reports for Large Certificated Air Carriers**

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

**14 CFR 243—Passenger Manifest Information**

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

**14 CFR 244—Reporting Tarmac Delay Data**

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: OST reviewed and has found that a non-substantive technical correction is necessary and will explore options to make this correction.

**14 CFR 247—Direct Airport-to-Airport Mileage Records**

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

**14 CFR 248—Submission of Audit Reports**

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

**14 CFR 249—Preservation of Air Carrier Records**

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

**14 CFR 250—Oversales**

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

**14 CFR 251—Carriage of Musical Instruments**

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

**14 CFR 252—Smoking Aboard Aircraft**

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

**14 CFR 253—Notice of Terms of Contract of Carriage**

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

**14 CFR 254—Domestic Baggage Liability**

Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed. These regulations are cost effective and impose the least burden.

**Federal Aviation Administration**

*Section 610 and Other Reviews*

The Federal Aviation Administration (FAA) has elected to use the two-step, two-year process used by most Department of Transportation (DOT) modes in past plans. As such, the FAA has divided its rules into 10 groups as displayed in the table below. During the first year (the "analysis year"), all rules published during the previous 10 years within a 10% block of the regulations will be analyzed to identify those with a significant economic impact on a substantial number of small entities (SEISNOSE). During the second year (the "review year"), each rule identified in the analysis year as having a SEISNOSE will be reviewed in accordance with section 610 (b) to determine if it should be continued without change or changed to minimize impact on small entities. Results of those reviews will be published in the DOT Semiannual Regulatory Agenda.

Year	Regulations to be reviewed	Analysis year	Review year
1 .....	14 CFR parts 141 through 147 and parts 170 through 187 .....	2020	2021
2 .....	14 CFR parts 189 through 198 and parts 1 through 16 .....	2021	2022
3 .....	14 CFR parts 17 through 33 .....	2022	2023
4 .....	14 CFR parts 34 through 39 and parts 400 through 405 .....	2023	2024
5 .....	14 CFR parts 43 through 49 and parts 406 through 415 .....	2024	2025
6 .....	14 CFR parts 60 through 77 .....	2025	2026
7 .....	14 CFR parts 91 through 107 .....	2026	2027
8 .....	14 CFR parts 417 through 460 .....	2027	2028
9 .....	14 CFR parts 119 through 129 and parts 150 through 156 .....	2028	2029
10 .....	14 CFR parts 133 through 139 and parts 157 through 169 .....	2029	2030

**Defining SEISNOSE for FAA Regulations**

The RFA does not define “significant economic impact.” Therefore, there is no clear rule or number to determine when a significant economic impact occurs. However, the Small Business Administration (SBA) states that significance should be determined by considering the size of the business, the size of the competitor’s business and the impact the same regulation has on larger competitors.

Likewise, the RFA does not define “substantial number.” However, the legislative history of the RFA suggests that a substantial number must be at least one but does not need to be an overwhelming percentage such as more than half. The SBA states that the substantiality of the number of small businesses affected should be determined on an industry-specific basis.

This analysis consisted of the following three steps:

1. Review of the number of small entities affected by the amendments to parts 141 through 147 and parts 170 through 187.
2. Identification and analysis of all amendments to parts 141 through 147 and parts 170 through 187 since July 2010 to determine whether any still have or now have a SEISNOSE.
3. Review of the FAA’s regulatory flexibility assessment of each amendment performed as required by the RFA.

**Year 2 (Fall 2021) List of Rules Analyzed**

- 14 CFR part 1—Definitions and abbreviations
- 14 CFR part 3—General requirements
- 14 CFR part 11—General rulemaking procedures
- 14 CFR part 13—Investigative and enforcement procedures
- 14 CFR part 14—Rules implementing the Equal Access to Justice Act of 1980
- 14 CFR part 15—Administrative claims under Federal Tort Claims Act

- 14 CFR part 16—Rules of practice for Federally-assisted airport enforcement proceedings
- 14 CFR part 189—Use of Federal Aviation Administration communications system
- 14 CFR part 193—Protection of voluntarily submitted information
- 14 CFR part 198—Aviation insurance
- Year 1 (Fall 2020) List of Rules Analyzed and Summary of Results

- 14 CFR part 141—Pilot Schools
- 14 CFR part 142—Training Centers
- 14 CFR part 143—Reserved
- 14 CFR part 144—Does not exist
- 14 CFR part 145—Repair Stations
- 14 CFR part 146—Does not exist
- 14 CFR part 147—Aviation Maintenance Technician Schools
- 14 CFR part 170—Establishment and Discontinuance Criteria for Air Traffic Control Services and Navigational Facilities
- 14 CFR part 171—Non-Federal Navigation Facilities
- 14 CFR part 172—Through 182 Does not exist
- 14 CFR part 183—Representatives of the Administrator
- 14 CFR part 184—Does not exist

**Year 1 (2020) List of Rules Analyzed and Summary of Results**

- 14 CFR part 141—Pilot Schools
  - Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.
  - General: No changes are needed.
- 14 CFR part 142—Training Centers
  - Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.
  - General: No changes are needed.
- 14 CFR part 145—Repair Stations
  - Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.
  - General: No changes are needed.

**14 CFR part 147—Aviation Maintenance Technician Schools**

- Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.

- General: No changes are needed.

**14 CFR part 170—Establishment and Discontinuance Criteria for Air Traffic Control Services and Navigational Facilities**

- Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.

- General: No changes are needed.

**14 CFR part 171: Non-Federal Navigational Facilities**

- Section 610: The agency conducted a Section 610 review of this part and found no amendments to 14 CFR 185 since July 2010. Thus, no SEISNOSE exists in this part.

- General: No changes are needed.

**14 CFR part 183: Representatives of the Administrator**

- Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.

- General: No changes are needed.

**14 CFR part 185: Testimony by Employees and Production of Records in Legal Proceedings, and Service of Legal Process and Pleadings**

- Section 610: The agency conducted a section 610 review of this part and found no amendments to 14 CFR 185 since July 2010. Thus, no SEISNOSE exists in this part.

- General: No changes are needed.

**14 CFR part 187: Fees**

- Section 610: The agency conducted a section 610 review of this part and found no SEISNOSE.

- General: No changes are needed.

**Federal Highway Administration***Section 610 and Other Reviews*

Year	Regulations to be reviewed	Analysis year	Review year
1 .....	None .....	2018	2019
2 .....	23 CFR parts 1 to 260 .....	2019	2020
3 .....	23 CFR parts 420 to 470 .....	2020	2021
4 .....	23 CFR part 500 .....	2021	2022
5 .....	23 CFR parts 620 to 637 .....	2022	2023
6 .....	23 CFR parts 645 to 669 .....	2023	2024
7 .....	23 CFR parts 710 to 924 .....	2024	2025
8 .....	23 CFR parts 940 to 973 .....	2025	2026
9 .....	23 CFR parts 1200 to 1252 .....	2026	2027
10 .....	New parts and subparts .....	2027	2028

**Federal-Aid Highway Program**

The Federal Highway Administration (FHWA) has adopted regulations in title 23 of the CFR, chapter I, related to the Federal-Aid Highway Program. These regulations implement and carry out the provisions of Federal law relating to the administration of Federal aid for highways. The primary law authorizing Federal aid for highways is chapter I of title 23 of the U.S.C. 145, which expressly provides for a federally assisted State program. For this reason, the regulations adopted by the FHWA in title 23

of the CFR primarily relate to the requirements that States must meet to receive Federal funds for construction and other work related to highways. Because the regulations in title 23 primarily relate to States, which are not defined as small entities under the Regulatory Flexibility Act, the FHWA believes that its regulations in title 23 do not have a significant economic impact on a substantial number of small entities. The FHWA solicits public comment on this preliminary conclusion.

**Year 4 (Fall 2021) List of Rules Analyzed and a Summary of the Results****23 CFR part 500—Management and Monitoring Systems**

- Section 610: No SEISNOSE. No small entities are affected.
- General: Section 1519(b) of the Moving Ahead for Progress in the 21st Century (MAP-21) Act (Pub. L. 112–141) repealed section 23 U.S.C. 303, which is the statutory basis for this regulation. FHWA plans on removing these obsolete regulations from Part

23, Code of Federal Regulations, as part of its rulemaking in RIN 2125–AF96.

Year 5 (Fall 2022) List of Rules That Will Be Analyzed During the Next Year

23 CFR part 620—Engineering

23 CFR part 625—Design Standards for Highways

23 CFR part 626—Pavement Policy

23 CFR part 627—Value Engineering

23 CFR part 630—Preconstruction Procedures

23 CFR part 633—Required Contract Provisions

23 CFR part 635—Construction and Maintenance

23 CFR part 636—Design-build Contracting

23 CFR part 637—Construction Inspection and Approval

**Federal Motor Carrier Safety Administration**

*Section 610 and Other Reviews*

Year	Regulations to be reviewed	Analysis year	Review year
1 .....	49 CFR part 386 .....	2018	2019
2 .....	49 CFR part 385 .....	2019	2020
3 .....	49 CFR parts 382 and 383 .....	2020	2021
4 .....	49 CFR part 380 .....	2021	2022
5 .....	49 CFR part 387 .....	2022	2023
6 .....	49 CFR part 398 .....	2023	2024
7 .....	49 CFR part 392 .....	2024	2025
8 .....	49 CFR part 375 .....	2025	2026
9 .....	49 CFR part 367 .....	2026	2027
10 .....	49 CFR part 395 .....	2027	2028

Year 4 (2021) List of Rules With Ongoing Analysis

49 CFR part 380—Special Training Requirements

1. *Section 610:* FMCSA analyzed 49 CFR part 380 but found no SEIOSNOSE. 49 CFR part 380 regulates two distinct training-related functions. The first presents requirements for longer combination vehicles (LCVs) and associated driver instructors; the second establishes minimum entry level commercial motor vehicle (CMV) training requirements. The major change is the introduction of the Entry-Level Driver Training (ELDT) rule which has a compliance date of February 7, 2022. The rule was

updated to ensure entry-level drivers seeking a CDL or a hazardous material (H), passenger (P), or school bus (S) endorsement received quality training. Small motor carriers and training providers are affected. Entry-level drivers are not small entities as defined by the U.S. Small Business Administration (SBA) and are therefore not included in the analysis. The ELDT rule requires motor carriers to maintain minimal training records. Motor carriers and training/educational institutions seeking to register on the Training Provider Registry (TPR) as training providers will incur some rule-driven administrative costs and prudent business-related costs.

2. *General:* There is no need for substantial revision. These regulations provide necessary/clear guidance to industry employers, drivers, and training providers. The regulations are written consistent with plain language guidelines, are cost effective, and impose the least economic burden to the industry.

Year 5 (2022) List of Rules That Will Be Analyzed During the Year

49 CFR part 387—Minimum Levels of Financial Responsibility for Motor Carriers.

**National Highway Traffic Safety Administration**

*Section 610 and Other Reviews*

Year	Regulations to be reviewed	Analysis year	Review year
1 .....	49 CFR 571.223 through 571.500, and parts 575 and 579 .....	2018	2019
2 .....	23 CFR part 1300 .....	2019	2020
3 .....	49 CFR parts 501 through 526 and 571.213 .....	2020	2021
4 .....	49 CFR 571.131, 571.217, 571.220, 571.221, and 571.222 .....	2021	2022
5 .....	49 CFR 571.101 through 571.110, and 571.135, 571.136, 571.138 and 571.139 .....	2022	2023
6 .....	49 CFR 571.141, and 49 CFR parts 529 through 578, except parts 571 and 575 .....	2023	2024
7 .....	49 CFR 571.111 through 571.129 and parts 580 through 588 .....	2024	2025
8 .....	49 CFR 571.201 through 571.212 .....	2025	2026
9 .....	49 CFR 571.214 through 571.219, except 571.217 .....	2026	2027
10 .....	49 CFR parts 591 through 595 and new parts and subparts .....	2027	2028

Years 1 Through 3 (Fall 2019–2021) List of Rules With Ongoing Analysis

49 CFR part 571.213—Child Restraint Systems

49 CFR part 571.223—Rear Impact Guards

49 CFR part 571.224—Rear Impact Protection

49 CFR part 571.225—Child Restraint Anchorage Systems

49 CFR part 571.226—Ejection Mitigation

49 CFR part 571.301—Fuel System Integrity

49 CFR part 571.302—Flammability of Interior Materials

49 CFR part 571.303—Fuel System Integrity of Compressed Natural Gas Vehicles

49 CFR part 571.304—Compressed Natural Gas Fuel Container Integrity

49 CFR part 571.305—Electric-Powered

Vehicles: Electrolyte Spillage and Electrical Shock Protection

49 CFR part 571.401—Interior Trunk Release

49 CFR part 571.403—Platform Lift Systems for Motor Vehicles

49 CFR part 571.404—Platform Lift Installations in Motor Vehicles

49 CFR part 571.500—Low-Speed Vehicles

49 CFR part 501—Organization and

Delegation of Powers and Duties

49 CFR part 509—OMB Control Numbers for Information Collection Requirements

49 CFR part 510—Information Gathering Powers

49 CFR part 511—Adjudicative Procedures

49 CFR part 512—Confidential Business

Information

49 CFR part 520—Procedures for Considering Environmental Impacts

49 CFR part 523—Vehicle Classification

49 CFR part 525—Exemptions from Average Fuel Economy Standards

49 CFR part 526—Petitions and Plans for Relief under the Automobile Fuel Efficiency Act of 1980

49 CFR part 575—Consumer Information

49 CFR part 579—Reporting of Information and Communications About Potential Defects

23 CFR part 1200—Uniform Procedures for State Highway Safety Grant Programs

23 CFR part 1300—Uniform Procedures for State Highway Safety Grant Programs

Year 4 (Fall 2022) List of Rules That Will Be Analyzed During Next Year

49 CFR part 571.131—School Bus Pedestrian Safety Devices

49 CFR part 571.217—Bus Emergency Exits and Window Retention and Release

49 CFR part 571.220—School Bus Rollover Protection

49 CFR part 571.221—School Bus Body Joint Strength

49 CFR part 571.222—School Bus Passenger Seating and Crash Protection

**Federal Railroad Administration**  
*Section 610 and Other Reviews*

Year	Regulations to be reviewed	Analysis year	Review year
1 .....	49 CFR parts 200, 207, 209, and 210 .....	2018	2019
2 .....	49 CFR parts 211, 212, 213, 214, and 215 .....	2019	2020
3 .....	49 CFR parts 216, 217, 218, 219, and 220 .....	2020	2021
4 .....	49 CFR parts 221, 222, 223, 224, and 225 .....	2021	2022
5 .....	49 CFR parts 227, 228, 229, 230, and 231 .....	2022	2023
6 .....	49 CFR parts 232, 233, 234, 235, and 236 .....	2023	2024
7 .....	49 CFR parts 237, 238, 239, 240, and 241 .....	2024	2025
8 .....	49 CFR parts 242, 243, 244, 250, and 256 .....	2025	2026
9 .....	49 CFR parts 261, 262, 264, 266, and 268 .....	2026	2027
10 .....	49 CFR parts 269, 270, 271, 272, and 273 .....	2027	2028

## Year 4 (Fall 2021) List of Rules Analyzed and a Summary of Results

49 CFR part 221—Rear End Marking Device—Passenger, Commuter and Freight Trains

- Section 610: There is no SEISNOSE.
- General: Since the rule prescribes minimum requirements for railroads to equip the rear car of passenger, commuter and freight trains with highly visible markers, it provides safety and security not only for railroad employees but also for the general public. No changes are needed. FRA's plain language review of this rule indicates no need for substantial revision.

49 CFR part 222—Use of Locomotive Horns at Public Highway-Rail Grade Crossings

- Section 610: There is no SEISNOSE.
- General: The purpose of this rule is to require locomotive horn use at public highway-rail grade crossings except in quiet zones established and maintained in accordance with this rule. FRA's plain language review of this rule indicates no need for substantial revision.

49 CFR part 223—Safety Glazing Standards—Locomotives, Passenger Cars and Caboose

- Section 610: There is no SEISNOSE.
- General: The rule provides minimum standards for glazing materials and is necessary to protect railroad employees and railroad passengers from injury because of objects striking the windows of locomotives, passenger cars and cabooses. Proposed amendments will reduce the regulatory burden on the railroad industry by eliminating the need to continue to use the waiver process for relief, while providing the railroad industry with regulatory certainty as to the applicability of part 223 to certain older equipment. FRA's plain language review of this rule indicates no need for substantial revision.

49 CFR part 224—Reflectorization of Rail Freight Rolling Stock

- Section 610: There is no SEISNOSE.
- General: The regulation requires freight rolling stock owners and railroads to have all freight rolling properly equipped with retroreflective material within 10 years of the effective date of the final rule for the purpose of enhancing its detectability at highway-rail crossings. Freight rolling stock owners and railroads are also required to periodically inspect and maintain that material. The rule also established a 10-year implementation schedule to help facilitate the initial application of retroreflective material to non-reflectorized freight rolling stock. Further, the regulation prescribes standards for the application, inspection, and maintenance of retroreflective material on rail freight rolling. FRA's plain language review of this rule indicates no need for revision.

49 CFR part 225—Railroad Accidents/Incidents: Reports Classification and Investigations

- Section 610: There is no SEISNOSE.
- Section 225.3 specifically states that certain Internal Control Plan and recordkeeping requirements are not applicable to railroads below a certain size. FRA also makes available a free software package to all railroads that would allow for FRA recordkeeping and reporting.
- General: Since FRA needs accurate information on the hazards and risks that exist on the nation's railroads to effectively carry out its regulatory responsibilities, to determine comparative trends of railroad safety, and to develop hazard elimination and risk reduction programs that focus on preventing railroad injuries and accidents, the requirements set forth in part 225 will improve railroad safety for industry employees and the general public.

## Year 5 (Fall 2022) List of Rules(s) That Will Be Analyzed During This Year

49 CFR part 227—Occupational Noise Exposure

49 CFR part 228—Passenger Train Employee Hours of Service; Recordkeeping and Reporting; Sleeping Quarters

49 CFR part 229—Railroad Locomotive Safety Standards

49 CFR part 230—Steam Locomotive

Inspection and Maintenance Standards

49 CFR part 231—Railroad Safety Appliance Standards

**Federal Transit Administration***Section 610 and Other Reviews*

The Regulatory Flexibility Act of 1980 (RFA), as amended (sections 601 through 612 of title 5, United States Code), requires Federal regulatory agencies to analyze all proposed and final rules to determine their economic impact on small entities, which include small businesses, organizations, and governmental jurisdictions. Section 610 requires government agencies to periodically review all regulations that will have a significant economic impact on a substantial number of small entities (SEISNOSE).

In complying with this section, the Federal Transit Administration (FTA) has elected to use the two-step, two-year process used by most Department of Transportation (DOT) modes. As such, FTA has divided its rules into 10 groups as displayed in the table below. During the analysis year, the listed rules will be analyzed to identify those with a SEISNOSE. During the review year, each rule identified in the analysis year as having a SEISNOSE will be reviewed in accordance with section 610(b) to determine if it should be continued without change or changed to minimize the impact on small entities.

Year	Regulations to be reviewed	Analysis year	Review year
1 .....	49 CFR parts 604, 605, and 624 .....	2018	2019
2 .....	49 CFR parts 609 and 640 .....	2019	2020
3 .....	49 CFR part 633 .....	2020	2021
4 .....	49 CFR part 611 .....	2021	2022
5 .....	49 CFR part 655 .....	2022	2023
6 .....	49 CFR parts 602 and 614 .....	2023	2024
7 .....	49 CFR parts 661 and 663 .....	2024	2025
8 .....	49 CFR parts 625, 630, and 665 .....	2025	2026
9 .....	49 CFR parts 613, 622, 670 and 674 .....	2026	2027
10 .....	49 CFR parts 650, 672 and 673 .....	2027	2028



Year 4 (2021) List of Rules Analyzed and Summary of Results

49 CFR part 633—Project Management Oversight

- Section 610: FTA conducted a Section 610 review of 49 CFR part 611 and determined that it would not result in a SEISNOSE within the meaning of the RFA.

The regulation implements the statutorily required process that applicants must follow to be considered eligible for fixed guideway capital investment grants.

- General: No changes are needed. FTA is currently updating its capital investment grant policy guidance pursuant to 49 U.S.C. 5309(g)(5).

Year 5 (2022) List of Rules To Be Analyzed This Year

49 CFR part 655—Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations

#### Maritime Administration

##### Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1 .....	46 CFR parts 201 through 205, 46 CFR parts 315 through 340, 46 CFR part 345 through 347, and 46 CFR parts 381 and 382.	2018	2019
2 .....	46 CFR parts 221 through 232 .....	2019	2020
3 .....	46 CFR parts 249 through 296 .....	2020	2021
4 .....	46 CFR parts 221, 298, 308, and 309 .....	2021	2022
5 .....	46 CFR parts 307 through 309 .....	2022	2023
6 .....	46 CFR part 310 .....	2023	2024
7 .....	46 CFR parts 315 through 340 .....	2024	2025
8 .....	46 CFR parts 345 through 381 .....	2025	2026
9 .....	46 CFR parts 382 through 389 .....	2026	2027
10 .....	46 CFR parts 390 through 393 .....	2027	2028

Year 1 (2018) List of Rules With Ongoing Analysis

46 CFR part 201—Rules of Practice and Procedure

46 CFR part 202—Procedures relating to review by Secretary of Transportation of actions by Maritime Subsidy Board

46 CFR part 203—Procedures relating to conduct of certain hearings under the Merchant Marine Act, 1936, as amended

46 CFR part 205—Audit Appeals; Policy and Procedure

46 CFR part 315—Agency Agreements and Appointment of Agents

46 CFR part 317—Bonding of Ship's Personnel

46 CFR part 324—Procedural Rules for Financial Transactions Under Agency Agreements

46 CFR part 325—Procedure to Be Followed by General Agents in Preparation of Invoices and Payment of Compensation Pursuant to Provisions of NSA Order No. 47

46 CFR part 326—Marine Protection and Indemnity Insurance Under Agreements with Agents

46 CFR part 327—Seamen's Claims; Administrative Action and Litigation

46 CFR part 328—Slop Chests

46 CFR part 329—Voyage Data

46 CFR part 330—Launch Services

46 CFR part 332—Repatriation of Seamen

46 CFR part 335—Authority and Responsibility of General Agents to Undertake Emergency Repairs in Foreign Ports

46 CFR part 336—Authority and Responsibility of General Agents to Undertake in Continental United States Ports Voyage Repairs and Service Equipment of Vessels Operated for the Account of The National Shipping Authority Under General Agency Agreement

46 CFR part 337—General Agent's Responsibility in Connection with Foreign Repair Custom's Entries

46 CFR part 338—Procedure for Accomplishment of Vessel Repairs Under National Shipping Authority Master Lump Sum Repair Contract—NSA-Lumpsumrep

46 CFR part 339—Procedure for Accomplishment of Ship Repairs Under National Shipping Authority Individual Contract for Minor Repairs—NSA-Workmanship

46 CFR part 340—Priority Use and Allocation of Shipping Services, Containers and Chassis, and Port Facilities and Services for National Security and National Defense Related Operations

46 CFR part 345—Restrictions Upon the Transfer or Change in Use or In Terms Governing Utilization of Port Facilities

46 CFR part 346—Federal Port Controllers

46 CFR part 347—Operating Contract

46 CFR part 381—Cargo Preference—U.S.-Flag Vessels

46 CFR part 382—Determination of Fair and Reasonable Rates for the Carriage of Bulk and Packaged Preference Cargoes on U.S.-Flag Commercial Vessels

Year 1 (2018) List of Rules Analyzed and a Summary of Results

46 CFR part 204—Claims against the Maritime Administration under the Federal Tort Claims Act

- Section 610: There is no SEIOSNOSE.
- General: The purpose of this rule is to prescribe the requirements and procedures for administrative claims against the United States involving the Maritime Administration under the Federal Tort Claims Act. The agency has determined that the rule is cost-effective and imposes the least possible burden on small entities. MARAD's plain language review of this rule indicates no need of substantial revision.

Year 2 (2019) List of Rules Analyzed and a Summary of Results

46 CFR part 221—Regulated Transactions Involving Documented Vessels and Other Maritime Interests

- Section 610: There is no SEIOSNOSE.

- General: The purpose of this rule is to govern practice and procedure in regulating interest in or control of Documented Vessels owned by Citizens of the United States to Noncitizens and transactions involving certain maritime interests in time of war or national emergency. The agency has determined that the rule is cost-effective and imposes the least possible burden on small entities. MARAD's plain language review of this rule indicates no need of substantial revision.

46 CFR 232—Uniform Financial Reporting Requirements

- Section 610: There is no SEIOSNOSE.
- General: The purpose of this rule is to govern practice and procedure to all participants in financial assistance programs administered by the Maritime Administration. The agency has determined that the rule is cost-effective and imposes the least possible burden on small entities. MARAD's plain language review of this rule indicates no need of substantial revision.

Year 3 (2020) List of Rules That Will Be Analyzed During the Year

46 CFR part 249—Approval of Underwriters for Marine Hull Insurance

46 CFR part 272—Requirements and Procedures for Conducting Condition Surveys and Administering Maintenance and Repair Subsidy

46 CFR part 277—Domestic and Foreign Trade; Interpretations

46 CFR part 287—Establishment of Construction Reserve Funds

46 CFR part 289—Insurance of Construction-Differential Subsidy Vessels, Operating-Differential Subsidy Vessels and of Vessels Sold or Adjusted Under the Merchant Ship Sales Act of 1946

46 CFR part 295—Maritime Security Program

46 CFR part 296—Maritime Security Program

#### Pipeline and Hazardous Materials Safety Administration (PHMSA)

##### Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1 .....	49 CFR part 178 .....	2018	2019
2 .....	49 CFR parts 178 through 180 .....	2019	2020
3 .....	49 CFR parts 172 and 175 .....	2020	2021
4 .....	49 CFR part 171, sections 171.15 and 171.16 .....	2021	2022
5 .....	49 CFR parts 106, 107, 171, 190, and 195 .....	2022	2023
6 .....	49 CFR parts 174, 177, and 199 .....	2023	2024
7 .....	49 CFR parts 176, 191 and 192 .....	2024	2025
8 .....	49 CFR parts 172 and 178 .....	2025	2026
9 .....	49 CFR parts 172, 173, 174, 176, 177, and 193 .....	2026	2027
10 .....	49 CFR parts 173 and 194 .....	2027	2028

Year 4 (Fall 2022) List of Rules Analyzed and a Summary of Results

49 CFR part 171—General Information, Regulations, Definitions  
 49 CFR 171.15—Immediate notice of certain hazardous materials incidents  
 49 CFR 171.16—Detailed hazardous materials incident reports

• Section 610: PHMSA conducted a review of this part and these sections and found no SEISNOSE.

• General: PHMSA's plain language review of these areas indicate no need for substantial revision. These regulations provide necessary/clear guidance to stakeholders on the applicability of the hazardous materials regulations, use of international transport standards, and PHMSA's incident reporting requirements—among other provisions. The regulations are written consistent with plain language guidelines, are cost effective, and impose the least economic burden to the industry.

For an example, the “Hazardous Materials: Harmonization With International Standards” (2137–AF46) rulemaking action is part of PHMSA's ongoing biennial process to harmonize the Hazardous Materials Regulations (HMR) with international regulations and standards. Federal law and policy strongly favor the harmonization of

domestic and international standards for hazardous materials transportation. The Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) directs PHMSA to participate in relevant international standard-setting bodies and promotes consistency of the HMR with international transport standards to the extent practicable. Federal hazardous materials law permits PHMSA to depart from international standards where appropriate, including to promote safety or other overriding public interests. However, Federal hazardous materials law otherwise encourages domestic and international harmonization (see 49 U.S.C. 5120). Harmonization facilitates international trade by minimizing the costs and other burdens of complying with multiple or inconsistent safety requirements for transportation of hazardous materials. Safety is enhanced by creating a uniform framework for compliance, and as the volume of hazardous materials transported in international commerce continues to grow, harmonization becomes increasingly important. The impact that the 2137–AF46 rulemaking will have on small entities is not expected to be significant. The rulemaking clarified provisions based on PHMSA's initiatives and correspondence with the regulated

community and domestic and international stakeholders, which helps promote safety through increased regulatory compliance. The changes were generally intended to provide relief and, as a result, positive economic benefits to shippers, carriers, and packaging manufacturers and testers, including small entities. This rulemaking is expected to lead to both economic and safety benefits. The amendments are expected to result in net benefits for shippers engaged in domestic and international commerce, including trans-border shipments within North America. Additionally, the effective changes of this rulemaking will relieve U.S. companies, including small entities competing in foreign markets, from the burden of complying with a dual system of regulations. This rulemaking is an example of PHMSA's review of rulemakings which helps ensure that the HMR do not have a significant economic impact on a substantial number of small entities.

Year 5 (Fall 2023) List of Rules That Will Be Analyzed During the Next Year

49 CFR parts 106, 107, 171, 190, and 195

**Great Lakes Saint Lawrence Seaway Development Corporation**

*Section 610 and Other Reviews*

Year	Regulations to be reviewed	Analysis year	Review year
1 .....	*33 CFR parts 401 through 403 .....	2018	2019

\* The review for these regulations is recurring each year of the 10-year review cycle (currently 2018 through 2027).

Year 1 (Fall 2018) List of Rules That Will Be Analyzed During the Next Year

33 CFR part 401—Seaway Regulations and Rules

33 CFR part 402—Tariff of Tolls

33 CFR part 403—Rules of Procedure of the Joint Tolls Review Board

**BILLING CODE 4910-81-P**

OFFICE OF THE SECRETARY—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
374 .....	++A Refunding Airline Tickets and Fees for Delayed Checked Bags and Ancillary Services That are not Provided.	2105–AF04

+ DOT-designated significant regulation.

## OFFICE OF THE SECRETARY—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
375 .....	+Air Transportation Consumer Protection Requirements for Ticket Agents <b>(Section 610 Review)</b> .....	2105–AE57

+ DOT-designated significant regulation.

## OFFICE OF THE SECRETARY—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
376 .....	Refunding Fees for Delayed Checked Bags and Unused Ancillary Services .....	2105–AE53

## FEDERAL AVIATION ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
377 .....	+Airport Safety Management System .....	2120–AJ38

+ DOT-designated significant regulation.

## FEDERAL AVIATION ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
378 .....	+Regulation Of Flight Operations Conducted By Alaska Guide Pilots .....	2120–AJ78
379 .....	+Drug and Alcohol Testing of Certain Maintenance Provider Employees Located Outside of the United States.	2120–AK09
380 .....	+Applying the Flight, Duty, and Rest Requirements to Ferry Flights That Follow Commuter or On-Demand Operations (FAA Reauthorization).	2120–AK26
381 .....	+Aircraft Registration and Airmen Certification Fees .....	2120–AK37
382 .....	+Helicopter Air Ambulance Pilot Training and Operational Requirements (HAA II) (FAA Reauthorization) ..	2120–AK57
383 .....	Requirements to File Notice of Construction of Meteorological Evaluation Towers and Other Renewable Energy Projects (Section 610 Review) <b>(Section 610 Review)</b> .	2120–AK77
384 .....	+Registration and Marking Requirements for Small Unmanned Aircraft .....	2120–AK82

+ DOT-designated significant regulation.

## FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
385 .....	Self-Insurance Program Cost Recovery <b>(Section 610 Review)</b> .....	2126–AC58
386 .....	Parts and Accessories Necessary for Safe Operation; Electronic Stability Control <b>(Section 610 Review)</b> ..	2126–AC59

## FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
387 .....	+Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States.	2126–AA35

+ DOT-designated significant regulation.

## FEDERAL RAILROAD ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
388 .....	+Train Crew Staffing <b>(Section 610 Review) (Reg Plan Seq No. 153)</b> .....	2130–AC88

+ DOT-designated significant regulation. References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## FEDERAL RAILROAD ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
389 .....	Risk Reduction Program ( <b>Section 610 Review</b> ) .....	2130–AC89

## SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
390 .....	Seaway Regulations and Rules: Periodic Update, Various Categories ( <b>Rulemaking Resulting From a Section 610 Review</b> ).	2135–AA51
391 .....	Tariff of Tolls ( <b>Rulemaking Resulting From a Section 610 Review</b> ) .....	2135–AA52
392 .....	Seaway Regulations and Rules: Periodic Update, Various Categories ( <b>Rulemaking Resulting From a Section 610 Review</b> ).	2135–AA53
393 .....	Tariff of Tolls ( <b>Rulemaking Resulting From a Section 610 Review</b> ) .....	2135–AA54

## PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
394 .....	+Pipeline Safety: Gas Pipeline Leak Detection and Repair .....	2137–AF51
395 .....	+Pipeline Safety: Pipeline Operational Status .....	2137–AF52
396 .....	+Pipeline Safety: Safety of Gas Distribution Pipelines and Other Pipeline Safety Initiatives .....	2137–AF53

+ DOT-designated significant regulation.

## PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
397 .....	+Hazardous Materials: Enhanced Safety Provisions for Lithium Batteries Transported by Aircraft (FAA Re-authorization Act of 2018).	2137–AF20

+ DOT-designated significant regulation.

## PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
398 .....	+Pipeline Safety: Amendments to Parts 192 and 195 to require Valve installation and Minimum Rupture Detection Standards.	2137–AF06

+ DOT-designated significant regulation.

## DEPARTMENT OF TRANSPORTATION (DOT)

Office of the Secretary (OST)

Proposed Rule Stage

**374. ++A Refunding Airline Tickets and Fees for Delayed Checked Bags and Ancillary Services That Are Not Provided [2105–AF04]**

*Legal Authority:* 49 U.S.C. 41712; 49 U.S.C. 40101, 49 U.S.C. 41702

*Abstract:* The Department of Transportation has consistently interpreted 49 U.S.C. 41712, which prohibits U.S. air carriers, foreign air carriers, and ticket agents from engaging in unfair practices in the sale of air transportation, to require carriers and ticket agents to provide requested refunds to passengers when a carrier

cancels or significantly changes a flight to, from, or within the United States. This rulemaking would clarify that, under the Department's rule requiring airlines to provide prompt refunds when ticket refunds are due and its rule requiring ticket agents to make refunds promptly when service cannot be performed as contracted, carriers and ticket agents must provide prompt ticket refunds to passengers when a carrier cancels or makes a significant change to a flight. This rulemaking would define cancellation and significant change, including addressing whether new itineraries involving delays of a certain length or additional stops constitute a significant change requiring a refund. This rulemaking would also address protections for consumers who are unable to travel due to government

restrictions. In addition, the rulemaking under RIN 2105–AE53 has been merged into this rulemaking. As such, this rulemaking would also require airlines to refund checked baggage fees when they fail to deliver the bags in a timely manner as provided by the FAA Extension, Safety and Security Act of 2016, and require airlines to promptly provide a refund to a passenger of any ancillary fees paid for services that the passenger did not receive as provided by the FAA Reauthorization Act of 2018.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/22/22	87 FR 51550
NPRM Comment Period End.	12/00/22	

Action	Date	FR Cite
Final Rule .....	11/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Blane A. Workie, Assistant General Counsel, Department of Transportation, Office of the Secretary, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366-9342, *Fax:* 202 366-7153, *Email:* blane.workie@ost.dot.gov.

*RIN:* 2105-AF04

## DEPARTMENT OF TRANSPORTATION (DOT)

*Office of the Secretary (OST)*

Long-Term Actions

### 375. +Air Transportation Consumer Protection Requirements for Ticket Agents (Section 610 Review) [2105-AE57]

*Legal Authority:* 49 U.S.C. 41712; FAA Reauthorization Act of 2018, Sec. 427

*Abstract:* This rulemaking would address a number of proposals to enhance protections for air travelers and to improve the air travel environment. Specifically, this rulemaking would enhance airline passenger protections by addressing whether to codify in regulation a definition of the term “ticket agent.” The rulemaking would also consider whether to require large travel agents to adopt minimum customer service standards and prohibit the unfair and deceptive practice of post-purchase price increases. These issues, previously part of a rulemaking known as Airline Pricing Transparency and Other Consumer Protection Issues, (2105-AE11) have been separated into this proceeding.

*Timetable:* Next Action Undetermined.

*Regulatory Flexibility Analysis Required: No.*

*Agency Contact:* Blane A. Workie, Assistant General Counsel, Department of Transportation, Office of the Secretary, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366-9342, *Fax:* 202 366-7153, *Email:* blane.workie@ost.dot.gov.

*RIN:* 2105-AE57

## DEPARTMENT OF TRANSPORTATION (DOT)

*Office of the Secretary (OST)*

Completed Actions

### 376. Refunding Fees for Delayed Checked Bags and Unused Ancillary Services [2105-AE53]

*Legal Authority:* Pub. L. 115-254; Pub. L. 114-190

*Abstract:* The Department of Transportation (DOT or Department) would require airlines to refund checked baggage fees when they fail to deliver the bags in a timely manner as provided by the FAA Extension, Safety and Security Act of 2016. The Department would also require airlines to promptly provide a refund to a passenger of any ancillary fees paid for services that the passenger did not receive as provided by the FAA Reauthorization Act of 2018. This rulemaking has been merged with the rulemaking under RIN 2105-AF04. As such, a combined final rule will be issued under RIN 2105-AF04 to address the matters proposed in this rulemaking.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	10/31/16	81 FR 75347
ANPRM Comment Period End.	11/30/16	
NPRM .....	07/21/21	86 FR 38420
NPRM Comment Period End.	09/20/21	
Terminated .....	10/26/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Blane A. Workie, Assistant General Counsel, Department of Transportation, Office of the Secretary, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366-9342, *Fax:* 202 366-7153, *Email:* blane.workie@ost.dot.gov.

*RIN:* 2105-AE53

## DEPARTMENT OF TRANSPORTATION (DOT)

*Federal Aviation Administration (FAA)*

Final Rule Stage

### 377. +Airport Safety Management System [2120-AJ38]

*Legal Authority:* 49 U.S.C. 44706; 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 44701 to 44706; 49 U.S.C. 44709; 49 U.S.C. 44719

*Abstract:* This rulemaking would require certain airport certificate holders to develop, implement, maintain, and adhere to a safety management system

(SMS) for its aviation related activities. An SMS is a formalized approach to managing safety by developing an organization-wide safety policy, developing formal methods of identifying hazards, analyzing and mitigating risk, developing methods for ensuring continuous safety improvement, and creating organization-wide safety promotion strategies.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/07/10	75 FR 62008
NPRM Comment Period Extended.	12/10/10	75 FR 76928
NPRM Comment Period End.	01/05/11	
End of Extended Comment Period.	03/07/11	
Second Extension of Comment Period.	03/07/11	76 FR 12300
End of Second Extended Comment Period.	07/05/11	
Second NPRM ....	07/14/16	81 FR 45871
Second NPRM Comment Period End.	09/12/16	
Final Rule .....	12/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* James Schroeder, Office of Airport Safety and Standards, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, *Phone:* 202 267-4974, *Email:* james.schroeder@faa.gov.

*RIN:* 2120-AJ38

## DEPARTMENT OF TRANSPORTATION (DOT)

*Federal Aviation Administration (FAA)*

Long-Term Actions

### 378. +Regulation of Flight Operations Conducted by Alaska Guide Pilots [2120-AJ78]

*Legal Authority:* 49 U.S.C. 106(g); 49 U.S.C. 1153; 49 U.S.C. 1155; 49 U.S.C. 40101 to 40103; 49 U.S.C. 40113; 49 U.S.C. 40120; 49 U.S.C. 44101; 49 U.S.C. 44105 to 44016; 49 U.S.C. 44111; 49 U.S.C. 44701 to 44717; 49 U.S.C. 44722; 49 U.S.C. 44901; 49 U.S.C. 44903 to 44904; 49 U.S.C. 44906; 49 U.S.C. 44912; 49 U.S.C. 44914; 49 U.S.C. 44936; 49 U.S.C. 44938; 49 U.S.C. 46103; 49 U.S.C. 46105; 49 U.S.C. 46306; 49 U.S.C. 46315 to 46316; 49 U.S.C. 46504; 49 U.S.C. 46506 to 46507; 49 U.S.C. 47122; 49 U.S.C. 47508; 49

U.S.C. 47528 to 47531; Articles 12 and 29 of 61 Statue 1180; Pub. L. 106–181, Sec. 732

**Abstract:** The rulemaking would establish regulations concerning Alaska guide pilot operations. The rulemaking would implement Congressional legislation and establish additional safety requirements for the conduct of these operations. The intended effect of this rulemaking is to enhance the level of safety for persons and property transported in Alaska guide pilot operations. In addition, the rulemaking would add a general provision applicable to pilots operating under the general operating and flight rules concerning falsification, reproduction, and alteration of applications, logbooks, reports, or records. This rulemaking is a statutory mandate under section 732 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, (Pub. L. 106–181).

**Timetable:** Next Action Undetermined.

**Regulatory Flexibility Analysis Required:** Yes.

**Agency Contact:** Jeff Smith, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20785, *Phone:* 202 365–3617, *Email:* jeffrey.smith@faa.gov.  
**RIN:** 2120–AJ78

### 379. +Drug and Alcohol Testing of Certain Maintenance Provider Employees Located Outside of the United States [2120–AK09]

**Legal Authority:** 14 CFR; 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 44701; 49 U.S.C. 44702; 49 U.S.C. 44707; 49 U.S.C. 44709; 49 U.S.C. 44717

**Abstract:** This rulemaking would require controlled substance testing of some employees working in repair stations located outside the United States. The intended effect is to increase participation by companies outside of the United States in testing of employees who perform safety critical functions and testing standards similar to those used in the repair stations located in the United States. This action is necessary to increase the level of safety of the flying public. This rulemaking is a statutory mandate under section 308(d) of the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95).

**Timetable:**

Action	Date	FR Cite
ANPRM .....	03/17/14	79 FR 14621
Comment Period Extended.	05/01/14	79 FR 24631
ANPRM Comment Period End.	05/16/14	

Action	Date	FR Cite
Comment Period End.	07/17/14	
Next Action Undetermined.	.....	

**Regulatory Flexibility Analysis Required:** Yes.

**Agency Contact:** Julia Brady, Program Analyst, Program Policy Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, *Phone:* 202 267–8083, *Email:* julia.brady@faa.gov.  
**RIN:** 2120–AK09

### 380. +Applying the Flight, Duty, and Rest Requirements to Ferry Flights That Follow Commuter or On-Demand Operations (FAA Reauthorization) [2120–AK26]

**Legal Authority:** 49 U.S.C. 106(f); 49 U.S.C. 106(g); 49 U.S.C. 1153; 49 U.S.C. 40101; 49 U.S.C. 40102; 49 U.S.C. 40103; 49 U.S.C. 40113; 49 U.S.C. 41706; 49 U.S.C. 44105; 49 U.S.C. 44106; 49 U.S.C. 44111; 49 U.S.C. 44701 to 44717; 49 U.S.C. 44722; 49 U.S.C. 44901; 49 U.S.C. 44903; 49 U.S.C. 44904; 49 U.S.C. 44906; 49 U.S.C. 44912; 49 U.S.C. 44914; 49 U.S.C. 44936; 49 U.S.C. 44938; 49 U.S.C. 45101 to 45105; 49 U.S.C. 46103

**Abstract:** This rulemaking would require a flightcrew member who is employed by an air carrier conducting operations under part 135, and who accepts an additional assignment for flying under part 91 from the air carrier or from any other air carrier conducting operations under part 121 or 135, to apply the period of the additional assignment toward any limitation applicable to the flightcrew member relating to duty periods or flight times under part 135.

**Timetable:** Next Action Undetermined.

**Regulatory Flexibility Analysis Required:** Yes.

**Agency Contact:** Chester Piolunek, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, *Phone:* 202 267–3711, *Email:* chester.piolunek@faa.gov.  
**RIN:** 2120–AK26

### 381. +Aircraft Registration and Airmen Certification Fees [2120–AK37]

**Legal Authority:** 31 U.S.C. 9701; 4 U.S.C. 1830; 49 U.S.C. 106(f); 49 U.S.C. 106(g); 49 U.S.C. 106(l)(6); 49 U.S.C. 40104; 49 U.S.C. 40105; 49 U.S.C. 40109; 49 U.S.C. 40113; 49 U.S.C. 40114; 49 U.S.C. 44101 to 44108; 49 U.S.C. 44110 to 44113; 49 U.S.C. 44701

to 44704; 49 U.S.C. 44707; 49 U.S.C. 44709 to 44711; 49 U.S.C. 44713; 49 U.S.C. 45102; 49 U.S.C. 45103; 49 U.S.C. 45301; 49 U.S.C. 45302; 49 U.S.C. 45305; 49 U.S.C. 46104; 49 U.S.C. 46301; Pub. L. 108–297, 118 Stat.

**Abstract:** This rulemaking would establish fees for airman certificates, medical certificates, and provision of legal opinions pertaining to aircraft registration or recordation. This rulemaking also would revise existing fees for aircraft registration, recording of security interests in aircraft or aircraft parts, and replacement of an airman certificate. This rulemaking addresses provisions of the FAA Modernization and Reform Act of 2012. This rulemaking is intended to recover the estimated costs of the various services and activities for which fees would be established or revised.

**Timetable:**

Action	Date	FR Cite
NPRM .....	To Be Determined	

**Regulatory Flexibility Analysis Required:** Yes.

**Agency Contact:** Isra Raza, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, *Phone:* 202 267–8994, *Email:* isra.raza@faa.gov.  
**RIN:** 2120–AK37

### 382. +Helicopter Air Ambulance Pilot Training and Operational Requirements (HAA II) (FAA Reauthorization) [2120–AK57]

**Legal Authority:** 49 U.S.C. 106(f); 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 41706; 49 U.S.C. 44701; 49 U.S.C. 44702; 49 U.S.C. 44705; 49 U.S.C. 44709; 49 U.S.C. 44711 to 44713; 49 U.S.C. 44715 to 44717; 49 U.S.C. 44722; 49 U.S.C. 44730; 49 U.S.C. 45101 to 45105

**Abstract:** This rulemaking would develop training requirements for crew resource management, flight risk evaluation, and operational control of the pilot in command, as well as to develop standards for the use of flight simulation training devices and line-oriented flight training. Additionally, it would establish requirements for the use of safety equipment for flight crewmembers and flight nurses. These changes will aid in the increase in aviation safety and increase survivability in the event of an accident. Without these changes, the Helicopter Air Ambulance industry may continue to see the unacceptable high rate of aircraft accidents. This rulemaking is a statutory mandate under section 306(e)

of the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95).

*Timetable:* Next Action Undetermined.

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Chris Holliday, Department of Transportation, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591, *Phone:* 202–267–4552, *Email:* [chris.holliday@faa.gov](mailto:chris.holliday@faa.gov).

*RIN:* 2120–AK57

### 383. Requirements To File Notice of Construction of Meteorological Evaluation Towers and Other Renewable Energy Projects (Section 610 Review) (Section 610 Review) [2120–AK77]

*Legal Authority:* 49 U.S.C. 40103

*Abstract:* This rulemaking would add specific requirements for proponents who wish to construct meteorological evaluation towers at a height of 50 feet above ground level (AGL) up to 200 feet AGL to file notice of construction with the FAA. This rule also requires sponsors of wind turbines to provide certain specific data when filing notice of construction with the FAA. This rulemaking is a statutory mandate under section 2110 of the FAA Extension, Safety, and Security Act of 2016 (Pub. L. 114–190).

*Timetable:* Next Action Undetermined.

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Brian Konie, Air Traffic Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, *Phone:* 202 267–8783, *Email:* [brian.konie@faa.gov](mailto:brian.konie@faa.gov).

*RIN:* 2120–AK77

### 384. +Registration and Marking Requirements for Small Unmanned Aircraft [2120–AK82]

*Legal Authority:* 49 U.S.C. 106(f), 49 U.S.C. 41703, 44101–44106, 44110–44113, and 44701

*Abstract:* This rulemaking would provide an alternative, streamlined and simple, web-based aircraft registration process for the registration of small, unmanned aircraft, including small unmanned aircraft operated exclusively for limited recreational operations, to facilitate compliance with the statutory requirement that all aircraft register prior to operation. It would also provide a simpler method for marking small, unmanned aircraft that is more appropriate for these aircraft. This action responds to public comments received regarding the proposed

registration process in the Operation and Certification of Small Unmanned Aircraft notice of proposed rulemaking, the request for information regarding unmanned aircraft system registration, and the recommendations from the Unmanned Aircraft System Registration Task Force.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	12/16/15	80 FR 78593
Interim Final Rule Effective.	12/21/15	
OMB approval of information collection.	12/21/15	80 FR 79255
Interim Final Rule Comment Period End.	01/15/16	
Final Rule .....	02/00/24	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Bonnie Lefko, Department of Transportation, Federal Aviation Administration, 6500 S MacArthur Boulevard, Registry Building 26, Room 118, Oklahoma City, OK 73169, *Phone:* 866 762–9434, *Email:* [bonnie.lefko@faa.gov](mailto:bonnie.lefko@faa.gov).

*RIN:* 2120–AK82

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION (DOT)

*Federal Motor Carrier Safety Administration (FMCSA)*

Proposed Rule Stage

### 385. Self-Insurance Program Cost Recovery (Section 610 Review) [2126–AC58]

*Legal Authority:* 31 U.S.C. 9701 and 49 U.S.C. 13906(d); 49 U.S.C. 13908(d)

*Abstract:* FMCSA will propose to amend fees collected for the processing of new self-insurance applications and add new fees for ongoing monitoring of carrier compliance with the self-insurance program requirements. Application fees will be directed to FMCSA's Licensing and Insurance (L&I) Account while monitoring fees must be sent to the Treasury. This rulemaking will amend 49 CFR 360.3T/360.3 to ensure that the limited number of primarily large motor carriers that benefit from the program bear a proportionate cost of participating in the program. FMCSA may also need to amend 49 CFR 360.5T/360.5 to reflect any specific updates to the user fee methodology that are required by this rulemaking.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/00/23	

*Regulatory Flexibility Analysis*

*Required:* No.

*Agency Contact:* Kenneth Riddle, Office Director, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, W65–308, Washington, DC 20590, *Phone:* 202 366–9616, *Email:* [kenneth.riddle@dot.gov](mailto:kenneth.riddle@dot.gov).

*RIN:* 2126–AC58

### 386. • Parts and Accessories Necessary for Safe Operation; Electronic Stability Control (Section 610 Review) [2126–AC59]

*Legal Authority:* Not Yet Determined

*Abstract:* Federal Motor Carrier Safety Administration (FMCSA) would cross-reference the National Highway Traffic Safety Administration's (NHTSA) requirements for original equipment manufacturers to install electronic stability control (ESC) on new vehicles and require interstate motor carriers to maintain the systems on commercial motor vehicles (CMVs).

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/22	

*Regulatory Flexibility Analysis*

*Required:* Undetermined.

*Agency Contact:* Sarah Stella, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–0192, *Email:* [sarah.stella@dot.gov](mailto:sarah.stella@dot.gov).

*RIN:* 2126–AC59

## DEPARTMENT OF TRANSPORTATION (DOT)

*Federal Motor Carrier Safety Administration (FMCSA)*

Long-Term Actions

### 387. +Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States [2126–AA35]

*Legal Authority:* Pub. L. 107–87, sec. 350; 49 U.S.C. 113; 49 U.S.C. 31136; 49 U.S.C. 31144; 49 U.S.C. 31502; 49 U.S.C. 504; 49 U.S.C. 5113; 49 U.S.C. 521(b)(5)(A)

*Abstract:* This rule would implement a safety monitoring system and compliance initiative designed to evaluate the continuing safety fitness of all Mexico-domiciled carriers within 18 months after receiving a provisional

Certificate of Registration or provisional authority to operate in the United States. It also would establish suspension and revocation procedures for provisional Certificates of Registration and operating authority, and incorporate criteria to be used by FMCSA in evaluating whether Mexico-domiciled carriers exercise basic safety management controls. The interim rule included requirements that were not proposed in the NPRM but which are necessary to comply with the FY-2002 DOT Appropriations Act. On January 16, 2003, the Ninth Circuit Court of Appeals remanded this rule, along with two other NAFTA-related rules, to the agency, requiring a full environmental impact statement and an analysis required by the Clean Air Act. On June 7, 2004, the Supreme Court reversed the Ninth Circuit and remanded the case, holding that FMCSA is not required to prepare the environmental documents. FMCSA originally planned to publish a final rule by November 28, 2003.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/03/01	66 FR 22415
NPRM Comment Period End.	07/02/01	
Interim Final Rule	03/19/02	67 FR 12758
Interim Final Rule Comment Period End.	04/18/02	
Interim Final Rule Effective.	05/03/02	
Notice of Intent to Prepare an EIS.	08/26/03	68 FR 51322
EIS Public Scoping Meetings.	10/08/03	68 FR 58162
Next Action Undetermined.	.....	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Sarah Stella, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, Phone: 202 366-0192, Email: sarah.stella@dot.gov.

RIN: 2126-AA35

BILLING CODE 4910-EX-P

## DEPARTMENT OF TRANSPORTATION (DOT)

*Federal Railroad Administration (FRA)*

Proposed Rule Stage

### 388. +Train Crew Staffing (Section 610 Review) [2130-AC88]

*Regulatory Plan:* This entry is Seq. No. 153 in part II of this issue of the **Federal Register**.

RIN: 2130-AC88

## DEPARTMENT OF TRANSPORTATION (DOT)

*Federal Railroad Administration (FRA)*

Final Rule Stage

### 389. Risk Reduction Program (Section 610 Review) [2130-AC89]

*Legal Authority:* 49 U.S.C. 20103; 49 U.S.C. 20156

*Abstract:* FRA published the Risk Reduction Program (RRP) final rule on February 18, 2020, as required by 49 U.S.C. 20156. The RRP final rule established regulations at 49 CFR part 271, requiring Class I freight railroads and Class II and III freight railroads that demonstrate inadequate safety performance to develop and implement an RRP to improve the safety of their operations. This NPRM would address a procedural issue raised in an Association of American Railroads (AAR) petition to remove 49 CFR 271.3(c), which states that employees of railroad contractors that perform a "Significant portion of a railroad's operation" are considered the railroad's "directly affected employees" for purposes of the RRP rule.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/08/22	87 FR 54938
NPRM Comment Period End.	11/07/22	
Final Rule .....	05/00/23	

*Regulatory Flexibility Analysis Required:* No.

*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-AC89

BILLING CODE 4910-06-P

## DEPARTMENT OF TRANSPORTATION (DOT)

*Saint Lawrence Seaway Development Corporation (SLSDC)*

Final Rule Stage

### 390. Seaway Regulations and Rules: Periodic Update, Various Categories (Rulemaking Resulting From a Section 610 Review) [2135-AA51]

*Legal Authority:* 33 U.S.C. 981 *et seq.*  
*Abstract:* The Great Lakes St. Lawrence Seaway Development

Corporation (GLS) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the GLS is amending the joint regulations by updating the Regulations and Rules in various categories.

*Timetable:*

Action	Date	FR Cite
Final Rule .....	12/00/22	

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Michal Chwedczuk, Department of Transportation, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE, Washington, DC 20590, Phone: 202 366-0091, Email: michal.chwedczuk@dot.gov.

RIN: 2135-AA51

### 391. Tariff of Tolls (Rulemaking Resulting From a Section 610 Review) [2135-AA52]

*Legal Authority:* 33 U.S.C. 981 *et seq.*

*Abstract:* The Great Lakes St. Lawrence Seaway Development Corporation (GLS) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the GLS and the SLSMC.

*Timetable:*

Action	Date	FR Cite
Final Rule .....	12/00/22	

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Michal Chwedczuk, Department of Transportation, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE, Washington, DC 20590, Phone: 202 366-0091, Email: michal.chwedczuk@dot.gov.

RIN: 2135-AA52

### 392. • Seaway Regulations and Rules: Periodic Update, Various Categories (Rulemaking Resulting From a Section 610 Review) [2135-AA53]

*Legal Authority:* 33 U.S.C. 981 *et seq.*  
*Abstract:* The Great Lakes St. Lawrence Seaway Development



Corporation (GLS) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the GLS is amending the joint regulations by updating the Regulations and Rules in various categories.

*Timetable:*

Action	Date	FR Cite
Final Rule .....	12/00/22	

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Michal Chwedczuk, Department of Transportation, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366-0091, *Email:* [michal.chwedczuk@dot.gov](mailto:michal.chwedczuk@dot.gov).

*RIN:* 2135-AA53

**393. • Tariff of Tolls (Rulemaking Resulting From a Section 610 Review) [2135-AA54]**

*Legal Authority:* 33 U.S.C. 981 *et seq.*

*Abstract:* The Great Lakes St. Lawrence Seaway Development Corporation (GLS) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the GLS and the SLSMC.

*Timetable:*

Action	Date	FR Cite
Final Rule .....	12/00/22	

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Michal Chwedczuk, Department of Transportation, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366-0091, *Email:* [michal.chwedczuk@dot.gov](mailto:michal.chwedczuk@dot.gov).

*RIN:* 2135-AA54

BILLING CODE 4910-61-P

**DEPARTMENT OF TRANSPORTATION (DOT)**

*Pipeline and Hazardous Materials Safety Administration (PHMSA)*

Proposed Rule Stage

**394. +Pipeline Safety: Gas Pipeline Leak Detection and Repair [2137-AF51]**

*Legal Authority:* 49 U.S.C. 60101 *et seq.*

*Abstract:* This rulemaking would amend the pipeline safety regulations to enhance requirements for detecting and repairing leaks on new and existing natural gas distribution, gas transmission, and gas gathering pipelines. The proposed rule is necessary to respond to a mandate from section 113 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Sayler Palabrica, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, District of Columbia, DC 20590, *Phone:* 202 366-0559, *Email:* [sayler.palabrica@dot.gov](mailto:sayler.palabrica@dot.gov).

*RIN:* 2137-AF51

**395. +Pipeline Safety: Pipeline Operational Status [2137-AF52]**

*Legal Authority:* 49 U.S.C. 60101 *et seq.*

*Abstract:* This rulemaking would amend the pipeline safety regulations to define an idled operational status for natural gas and hazardous liquid pipelines that are temporarily removed from service, set operations and maintenance requirements for idled pipelines, and establish inspection requirements for idled pipelines that are returned to service. The proposed rule is necessary to respond to a mandate from the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Sayler Palabrica, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, District of Columbia, DC

20590, *Phone:* 202 366-0559, *Email:* [sayler.palabrica@dot.gov](mailto:sayler.palabrica@dot.gov).

*RIN:* 2137-AF52

**396. +Pipeline Safety: Safety of Gas Distribution Pipelines and Other Pipeline Safety Initiatives [2137-AF53]**

*Legal Authority:* 49 U.S.C. 60101 *et seq.*

*Abstract:* This rulemaking would amend the pipeline safety regulations to enhance the safety requirements for gas distribution pipelines. The proposed rule is necessary to respond to several mandates from title II of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (PIPES Act of 2020).

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ashlin Bollacker, Technical Writer, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366-4203, *Email:* [ashlin.bollacker@dot.gov](mailto:ashlin.bollacker@dot.gov).

*RIN:* 2137-AF53

**DEPARTMENT OF TRANSPORTATION (DOT)**

*Pipeline and Hazardous Materials Safety Administration (PHMSA)*

Final Rule Stage

**397. +Hazardous Materials: Enhanced Safety Provisions for Lithium Batteries Transported by Aircraft (FAA Reauthorization Act of 2018) [2137-AF20]**

*Legal Authority:* 49 U.S.C. 44701; 49 U.S.C. 5103(b); 49 U.S.C. 5120(b)

*Abstract:* This rulemaking amends the Hazardous Materials Regulations (HMR) to (1) prohibit the transport of lithium ion cells and batteries as cargo on passenger aircraft; (2) require all lithium ion cells and batteries to be shipped at not more than a 30 percent state of charge on cargo-only aircraft; and (3) limit the use of alternative provisions for small lithium cell or battery to one package per consignment. The amendments do not restrict passengers or crew members from bringing personal items or electronic devices containing lithium cells or batteries aboard aircraft, or restrict the air transport of lithium ion cells or batteries when packed with or contained in equipment. To accommodate persons in areas

potentially not serviced daily by cargo aircraft, PHMSA provides a limited exception for not more than two replacement lithium cells or batteries specifically used for medical devices to be transported by passenger aircraft and at a state of charge greater than 30 percent, under certain conditions and as approved by the Associate Administrator. This rulemaking is necessary to meet the FAA Reauthorization Act of 2018, address a safety hazard, and harmonize the HMR with emergency amendments to the 2015–2016 edition of the International Civil Aviation Organization’s Technical Instructions for the Safe Transport of Dangerous Goods by Air.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	03/06/19	84 FR 8006
Interim Final Rule Effective.	03/06/19	
Interim Final Rule Comment Period End.	05/06/19	
Final Rule .....	01/00/23	

*Regulatory Flexibility Analysis Required:* Yes.  
*Agency Contact:* Eugenio Cardez, 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:* [eugenio.cardez@dot.gov](mailto:eugenio.cardez@dot.gov).  
*RIN:* 2137–AF20

**DEPARTMENT OF TRANSPORTATION (DOT)**

*Pipeline and Hazardous Materials Safety Administration (PHMSA)*  
Completed Actions

**398. +Pipeline Safety: Amendments to Parts 192 and 195 To Require Valve Installation and Minimum Rupture Detection Standards [2137–AF06]**

*Legal Authority:* 49 U.S.C. 60101 *et seq.*  
*Abstract:* This rulemaking action would revise the Pipeline Safety Regulations applicable to most newly constructed and entirely replaced onshore natural gas transmission and hazardous liquid pipelines to improve rupture mitigation and shorten pipeline segment isolation times. The rulemaking action would define “notification of potential rupture” and outline certain

performance standards related to rupture identification and pipeline segment isolation. This rulemaking action also would require specific valve maintenance and inspection requirements, and 9–1–1 notification requirements to help operators achieve better rupture response and mitigation.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/06/20	85 FR 7162
NPRM Comment Period End.	04/06/20	
Final Rule .....	04/08/22	87 FR 20940
Final Rule Effective.	10/05/22	

*Regulatory Flexibility Analysis Required:* Yes.  
*Agency Contact:* Robert Jagger, Technical Writer, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–4595, *Email:* [robert.jagger@dot.gov](mailto:robert.jagger@dot.gov).  
*RIN:* 2137–AF06  
[FR Doc. 2023–02031 Filed 2–21–23; 8:45 am]  
**BILLING CODE 4910–60–P**



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Part XIV

Department of the Treasury

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Semiannual Regulatory Agenda

**DEPARTMENT OF THE TREASURY****31 CFR Subtitles A and B****Semiannual Agenda and Regulatory Plan****AGENCY:** Department of the Treasury.**ACTION:** Semiannual Regulatory Agenda and Annual Regulatory Plan.

**SUMMARY:** This notice is given pursuant to the requirements of the Regulatory Flexibility Act and Executive Order (E.O.) 12866 (“Regulatory Planning and Review”), which require the publication by the Department of a semiannual agenda of regulations. E.O. 12866 also requires the publication by the Department of a regulatory plan for the upcoming fiscal year. The purpose of the agenda is to provide advance information about pending regulatory activities and encourage public participation in the regulatory process.

**FOR FURTHER INFORMATION CONTACT:** The Agency contact identified in the item relating to that regulation.

**SUPPLEMENTARY INFORMATION:** The semiannual regulatory agenda includes regulations that the Department has issued or expects to issue and rules currently in effect that are under departmental or bureau review. For this edition of the regulatory agenda, the most important significant regulatory actions and a Statement of Regulatory

Priorities are included in the Regulatory Plan, which appears in both the online Unified Agenda and in part II of the **Federal Register** publication that includes the Unified Agenda.

The complete Unified Agenda will be available online at [www.reginfo.gov](http://www.reginfo.gov) and [www.regulations.gov](http://www.regulations.gov) in a format that offers users an enhanced ability to obtain information from the Agenda database. Because publication in the **Federal Register** is mandated for the regulatory flexibility agenda required by the Regulatory Flexibility Act (5 U.S.C. 602), Treasury’s printed agenda entries include only:

(1) Rules that are in the regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Rules that have been identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act’s Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the internet. In addition, for fall editions of the Agenda, the entire Regulatory Plan will continue to be printed in the **Federal Register**, as in past years.

The Department has listed in this agenda all regulations and regulatory

reviews pending at the time of publication, except for technical, minor, and routine actions. On occasion, a regulatory matter may be inadvertently left off of the agenda or an emergency may arise that requires the Department to initiate a regulatory action not yet on the agenda. There is no legal significance to the omission of an item from this agenda. For most entries, Treasury includes a projected date for the next rulemaking action; however, the date is an estimate and is not a commitment to publish on the projected date. In addition, some agenda entries are marked as “withdrawn” when there has been no publication activity. Withdrawal of a rule from the agenda does not necessarily mean that a rule will not be included in a future agenda but may mean that further consideration is warranted and that the regulatory action is unlikely in the next 12 months.

Public participation in the rulemaking process is the foundation of effective regulations. For this reason, the Department invites comments on all regulatory and deregulatory items included in the agenda and invites input on items that should be included in the semiannual agenda.

**Michael Briskin,***Deputy Assistant General Counsel for General Law and Regulation.***FINANCIAL CRIMES ENFORCEMENT NETWORK—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
399 .....	Section 6101. Establishment of National Exam and Supervision Priorities .....	1506–AB52
400 .....	Real Estate Transaction Reports and Records .....	1506–AB54
401 .....	Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities .....	1506–AB59
402 .....	Revisions to Customer Due Diligence Requirements for Financial Institutions .....	1506–AB60

**FINANCIAL CRIMES ENFORCEMENT NETWORK—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
403 .....	Section 6212. Pilot Program on Sharing of Information Related to Suspicious Activity Reports Within a Financial Group.	1506–AB51

**FINANCIAL CRIMES ENFORCEMENT NETWORK—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
404 .....	Amendments to the Definition of Broker or Dealer in Securities (Crowd Funding) .....	1506–AB36
405 .....	Clarification of the Requirement to Collect, Retain, and Transmit Information on Transactions Involving Convertible Virtual Currencies and Digital Assets With Legal Tender Status.	1506–AB41
406 .....	Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets .....	1506–AB47
407 .....	Section 6110. Bank Secrecy Act Application to Dealers in Antiquities and Assessment of Bank Secrecy Act Application to Dealers in Arts.	1506–AB50

## FINANCIAL CRIMES ENFORCEMENT NETWORK—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
408 .....	Beneficial Ownership Information Reporting Requirements .....	1506–AB49

## CUSTOMS REVENUE FUNCTION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
409 .....	Enforcement of Copyrights and the Digital Millennium Copyright Act .....	1515–AE26

## INTERNAL REVENUE SERVICE—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
410 .....	Guidance on the Elimination of Interbank Offered Rates .....	1545–BO91
411 .....	MEPs and the Unified Plan Rule .....	1545–BO97
412 .....	Information Reporting of Health Insurance Coverage and Other Issues Under Sections 6055 and 6056 ....	1545–BQ11

## INTERNAL REVENUE SERVICE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
413 .....	Section 42 Low-Income Housing Credit Average Income Test Regulations .....	1545–BO92
414 .....	Requirements Related to Surprise Billing, Part 1 .....	1545–BQ01
415 .....	Requirements Related to Surprise Billing, Part 2 .....	1545–BQ02
416 .....	Requirements Related to Surprise Billing, Part 1 (Temporary Regulation) .....	1545–BQ04
417 .....	Requirements Related to Surprise Billing, Part 2 (Temporary Regulation) .....	1545–BQ05

**DEPARTMENT OF THE TREASURY (TREAS)***Financial Crimes Enforcement Network (FinCEN)*

## Proposed Rule Stage

**399. Section 6101. Establishment of National Exam and Supervision Priorities [1506–AB52]**

*Legal Authority:* 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

*Abstract:* FinCEN intends to issue a Notice of Proposed Rulemaking (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.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/00/23	
NPRM Comment Period End.	05/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* FinCEN Regulatory Support Section, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, *Phone:* 800 767–2825, *Email:* [frc@fincen.gov](mailto:frc@fincen.gov).

*RIN:* 1506–AB52

**400. Real Estate Transaction Reports and Records [1506–AB54]**

*Legal Authority:* 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

*Abstract:* FinCEN intends to issue a Notice of Proposed Rulemaking (NPRM) to address money laundering threats in the U.S. real estate sector.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	12/08/21	86 FR 69589
ANPRM Comment Period End.	02/07/22	
NPRM .....	04/00/23	
NPRM Comment Period End.	06/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* FinCEN Regulatory Support Section, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, *Phone:* 800 767–2825, *Email:* [frc@fincen.gov](mailto:frc@fincen.gov).  
*RIN:* 1506–AB54

**401. • Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities [1506–AB59]**

*Legal Authority:* 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

*Abstract:* FinCEN intends to issue a 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.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/22	
NPRM Comment Period End.	02/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* FinCEN Regulatory Support Section, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, Phone: 800 767–2825, Email: [frc@fincen.gov](mailto:frc@fincen.gov).

RIN: 1506–AB59

**402. • Revisions to Customer Due Diligence Requirements for Financial Institutions [1506–AB60]**

*Legal Authority:* 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

*Abstract:* FinCEN intends to issue 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.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/00/23	
NPRM Comment Period End.	01/00/24	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* FinCEN Regulatory Support Section, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, Phone: 800 767–2825, Email: [frc@fincen.gov](mailto:frc@fincen.gov).

RIN: 1506–AB60

**DEPARTMENT OF THE TREASURY (TREAS)**

*Financial Crimes Enforcement Network (FINCEN)*

Final Rule Stage

**403. Section 6212. Pilot Program on Sharing of Information Related to Suspicious Activity Reports Within a Financial Group [1506–AB51]**

*Legal Authority:* 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

*Abstract:* FinCEN intends to issue a Final Rule in order to implement Section 6212 of the Anti-Money Laundering Act of 2020 (the AML Act). This section amends the Bank Secrecy Act (31 U.S.C. 5318(g)) to establish a pilot program that permits financial institutions to share suspicious activity report (SAR) information with their foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance risks. The section further requires the Secretary of the Treasury to issue rules to implement the amendment within one year of enactment of the AML Act.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/25/22	87 FR 3719
NPRM Comment Period End.	03/28/22	
Final Rule .....	08/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* FinCEN Regulatory Support Section, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, Phone: 800 767–2825, Email: [frc@fincen.gov](mailto:frc@fincen.gov).

RIN: 1506–AB51

**DEPARTMENT OF THE TREASURY (TREAS)**

*Financial Crimes Enforcement Network (FINCEN)*

Long-Term Actions

**404. Amendments to the Definition of Broker or Dealer in Securities (Crowd Funding) [1506–AB36]**

*Legal Authority:* 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5332

*Abstract:* FinCEN is finalizing amendments to the regulatory definitions of “broker or dealer in securities” under the regulations implementing the Bank Secrecy Act. The changes are intended to expand the

current scope of the definitions to include funding portals. In addition, these amendments would require funding portals to implement policies and procedures reasonably designed to achieve compliance with all of the Bank Secrecy Act requirements that are currently applicable to brokers or dealers in securities. The rule to require these organizations to comply with the Bank Secrecy Act regulations is intended to help prevent money laundering, terrorist financing, and other financial crimes.

**Note:** This is not a new requirement; it replaces RINs 1506–AB24 and 1506–AB29.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/04/16	81 FR 19086
NPRM Comment Period End.	06/03/16	
Final Action .....	To Be Determined	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* FinCEN Regulatory Support Section, Phone: 800 767–2825, Email: [frc@fincen.gov](mailto:frc@fincen.gov).

RIN: 1506–AB36

**405. Clarification of the Requirement To Collect, Retain, and Transmit Information on Transactions Involving Convertible Virtual Currencies and Digital Assets With Legal Tender Status [1506–AB41]**

*Legal Authority:* 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

*Abstract:* The Board of Governors of the Federal Reserve System and FinCEN (collectively, the “Agencies”) intend to issue a revised proposal to clarify the meaning of “money” as used in the rules implementing the Bank Secrecy Act requiring financial institutions to collect, retain, and transmit information on certain funds transfers and transmittals of funds. The Agencies intend that the revised proposal will ensure that the rules apply to domestic and cross-border transactions involving convertible virtual currency, which is a medium of exchange (such as cryptocurrency) that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status. The Agencies further intend that the revised proposal will clarify that these rules apply to domestic and cross-border transactions involving digital assets that have legal tender status.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/27/20	85 FR 68005
NPRM Comment Period End.	11/27/20	
Second NPRM ....	02/00/24	
Second NPRM Comment Period End.	04/00/24	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* FinCEN Regulatory Support Section, Phone: 800 767–2825, Email: [frc@fincen.gov](mailto:frc@fincen.gov).

RIN: 1506–AB41

**406. Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets [1506–AB47]**

*Legal Authority:* 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

*Abstract:* FinCEN is amending the regulations implementing the Bank Secrecy Act (BSA) to require banks and money service businesses (MSBs) to submit reports, keep records, and verify the identity of customers in relation to transactions involving convertible virtual currency (CVC) or digital assets with legal tender status (“legal tender digital assets” or “LTDA”) held in unhosted wallets, or held in wallets hosted in a jurisdiction identified by FinCEN.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/23/20	85 FR 83840
NPRM Comment Period End.	01/04/21	
Final Action .....	02/00/24	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* FinCEN Regulatory Support Section, Phone: 800 767–2825, Email: [frc@fincen.gov](mailto:frc@fincen.gov).

RIN: 1506–AB47

**407. Section 6110. Bank Secrecy Act Application to Dealers in Antiquities and Assessment of Bank Secrecy Act Application to Dealers in Arts [1506–AB50]**

*Legal Authority:* 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

*Abstract:* FinCEN intends to issue a Notice of Proposed Rulemaking to implement Section 6110 of the Anti-Money Laundering Act of 2020 (the AML Act). This section amends the Bank Secrecy Act (31 U.S.C. 5312(a)(2)) to include as a financial institution a person engaged in the trade of antiquities, including an advisor,

consultant, or any other person who engages as a business in the solicitation or the sale of antiquities, subject to regulations prescribed by the Secretary of the Treasury. The section further requires the Secretary of the Treasury to issue proposed rules to implement the amendment within 360 days of enactment of the AML Act.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	09/24/21	86 FR 53021
ANPRM Comment Period End.	10/25/21	
NPRM .....	To Be Determined	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* FinCEN Regulatory Support Section, Phone: 800 767–2825, Email: [frc@fincen.gov](mailto:frc@fincen.gov).

RIN: 1506–AB50

**DEPARTMENT OF THE TREASURY (TREAS)**

*Financial Crimes Enforcement Network (FINCEN)*

Completed Actions

**408. Beneficial Ownership Information Reporting Requirements [1506–AB49]**

*Legal Authority:* 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1960; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

*Abstract:* On September 30, 2022, FinCEN 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.

*Completed:*

Reason	Date	FR Cite
Final Action .....	09/30/22	87 FR 59498
Final Action Effective.	01/01/24	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* FinCEN Regulatory Support Section, Phone: 800 767-2825, Email: [frc@fincen.gov](mailto:frc@fincen.gov).

*RIN:* 1506-AB49

**BILLING CODE 4810-02-P**

## DEPARTMENT OF THE TREASURY (TREAS)

*Customs Revenue Function (CUSTOMS)*

Final Rule Stage

### 409. Enforcement of Copyrights and the Digital Millennium Copyright Act [1515-AE26]

*Legal Authority:* Title III of the Trade Facilitation and Trade Enforcement Act of 2015 (Pub. L. 114-125); 19 U.S.C. 1595a(c)(2)(G); 19 U.S.C. 1624

*Abstract:* This rule amends the U.S. Customs and Border Protection (CBP) regulations pertaining to importations of merchandise that violate or are suspected of violating the copyright laws in accordance with title III of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) and certain provisions of the Digital Millennium Copyright Act (DMCA).

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/16/19	84 FR 55251
NPRM Comment Period End.	12/16/19	
Final Rule .....	07/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Alaina Van Horn, Chief, Intellectual Property Enforcement Branch, Department of the Treasury, Customs Revenue Function, 1331 Pennsylvania Avenue NW, Washington, DC 20229, Phone: 202 325-0083, Email: [alaina.vanhorn@cbp.dhs.gov](mailto:alaina.vanhorn@cbp.dhs.gov).

*RIN:* 1515-AE26

**BILLING CODE 9111-14-P**

## DEPARTMENT OF THE TREASURY (TREAS)

*Internal Revenue Service (IRS)*

Final Rule Stage

### 410. Guidance on the Elimination of Interbank Offered Rates [1545-BO91]

*Legal Authority:* 26 U.S.C. 882c and 7805; 26 U.S.C. 7805

*Abstract:* The final regulations will provide guidance on the tax consequences of the phased elimination of interbank offered rates (IBORs) that is underway in the United States and many foreign countries. Taxpayers have requested guidance that addresses the transition from IBOR to other reference rates and the determination of the interest expense deduction of a foreign corporation.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/09/19	84 FR 54068
NPRM Comment Period End.	11/25/19	
Final Action (TD 9961).	01/04/22	87 FR 166
Final Action Effective.	03/07/22	
Final Action .....	04/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Caleb Trimm, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Room 4579, Washington, DC 20224, Phone: 202 317-6002, Fax: 855 589-8672, Email: [caleb.w.trim2@irs.counsel.treas.gov](mailto:caleb.w.trim2@irs.counsel.treas.gov).

*RIN:* 1545-BO91

### 411. MEPS and the Unified Plan Rule [1545-BO97]

*Legal Authority:* 26 U.S.C. 7805; 26 U.S.C. 413

*Abstract:* These proposed regulations provide guidance relating to the tax qualification of multiple employer plans (MEPs) described in section 413(e) of the Internal Revenue Code (Code). The proposed regulations would provide an exception, if certain requirements are met, to the application of the "unified plan rule" for section 413(e) MEPs in the event of a failure by one or more participating employers to take actions required of them to satisfy the requirements of section 401(a) or 408 of the Code. The regulations affect participants in MEPs, MEP sponsors and administrators, and employers maintaining MEPs.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/03/19	84 FR 31777

Action	Date	FR Cite
NPRM Comment Period End.	10/01/19	87 FR 17225
Second NPRM ....	03/28/22	
Second NPRM Comment Period End.	05/27/22	
Final Action .....	05/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jamie Dvoretzky, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, Phone: 202 317-4836, Fax: 885 605-5282, Email: [jamie.l.dvoretzky@irs.counsel.treas.gov](mailto:jamie.l.dvoretzky@irs.counsel.treas.gov).

*RIN:* 1545-BO97

### 412. Information Reporting of Health Insurance Coverage and Other Issues Under Sections 6055 and 6056 [1545-BQ11]

*Legal Authority:* 26 U.S.C. 7805; 26 U.S.C. 5000A; 26 U.S.C. 6056

*Abstract:* These regulations revise notice and filing requirements under sections 6055 and 6056 of the Internal Revenue Code. The regulations are needed to provide health coverage reporters an extension of time in which to furnish certain statements and an alternative manner of allowing certain health coverage reporters to provide information to covered individuals. These regulations also provide that the term "minimum essential coverage", as that term is defined in health insurance-related tax laws, does not include Medicaid coverage limited to COVID-19 testing and diagnostic services provided pursuant to the Families First Coronavirus Response Act.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/06/21	86 FR 68939
NPRM Comment Period End.	02/04/22	
Final Action .....	12/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Gerald Semasek, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20024, Phone: 202 317-7006, Fax: 855 576-2339, Email: [gerald.semasek@irs.counsel.treas.gov](mailto:gerald.semasek@irs.counsel.treas.gov).

*RIN:* 1545-BQ11



**DEPARTMENT OF THE TREASURY  
(TREAS)***Internal Revenue Service (IRS)***Completed Actions****413. Section 42 Low-Income Housing Credit Average Income Test Regulations [1545–BO92]***Legal Authority:* 26 U.S.C. 7805; 26 U.S.C. 42*Abstract:* The Consolidated Appropriations Act of 2018 added a new applicable minimum set-aside test under section 42(g) of the Internal Revenue Code known as the average income test. This proposed regulation will implement requirements related to the average income test.*Completed:*

Reason	Date	FR Cite
Final Action ..... Final Action Effective.	10/12/22 10/12/22	87 FR 61489

*Regulatory Flexibility Analysis Required: Yes.**Agency Contact:* Dillon J. Taylor,  
*Phone:* 202 317–3734, *Email:*  
*dillon.j.taylor@irsounsel.treas.gov.**RIN:* 1545–BO92**414. Requirements Related to Surprise Billing, Part 1 [1545–BQ01]***Legal Authority:* 26 U.S.C. 7805; Pub. L. 116–260, Division BB, Title I and Title II*Abstract:* The regulations implement the protections against surprise medical bills under the No Surprises Act, including requirements on group health plans, issuers offering group or individual health insurance coverage, providers, facilities, and providers of air ambulance services.*Completed:*

Reason	Date	FR Cite
TD 9965 Final Rules. Final Action Effective.	08/26/22 10/25/22	87 FR 52618

*Regulatory Flexibility Analysis Required: Yes.**Agency Contact:* Shira McKinlay,  
*Phone:* 202 317–5500, *Email:*  
*shira.b.mckinlay@irsounsel.treas.gov.*  
*RIN:* 1545–BQ01**415. Requirements Related to Surprise Billing, Part 2 [1545–BQ02]***Legal Authority:* 26 U.S.C. 7805; Pub. L. 116–260, Division BB, Title I and Title II*Abstract:* The regulations would implement additional protections against surprise medical bills under the No Surprises Act, including provisions related to the independent dispute resolution process.*Completed:*

Reason	Date	FR Cite
TD 9965 Final Rules. Final Action Effective.	08/26/22 10/25/22	87 FR 52618

*Regulatory Flexibility Analysis Required: Yes.**Agency Contact:* Shira McKinlay,  
*Phone:* 202 317–5500, *Email:*  
*shira.b.mckinlay@irsounsel.treas.gov.*  
*RIN:* 1545–BQ02**416. Requirements Related to Surprise Billing, Part 1 (Temporary Regulation) [1545–BQ04]***Legal Authority:* 26 U.S.C. 7805; Pub. L. 116–260, Division BB, Title I and Title II*Abstract:* This temporary regulation implements the protections against surprise medical bills under the No Surprises Act.*Completed:*

Reason	Date	FR Cite
Final Rule and Removal of Temporary Regulations: TD 9951.	08/26/22	87 FR 52618

*Regulatory Flexibility Analysis Required: Yes.**Agency Contact:* Kari L. DiCecco,  
*Phone:* 202 317–5500, *Email:*  
*kari.l.dicecco@irsounsel.treas.gov.*  
*RIN:* 1545–BQ04**417. Requirements Related to Surprise Billing, Part 2 (Temporary Regulation) [1545–BQ05]***Legal Authority:* 26 U.S.C. 7805; Pub. L. 116–260, Division BB, Title I and Title II*Abstract:* This temporary regulation would implement additional protections against surprise medical bills under the No Surprises Act and certain provisions related to Title II of Division BB of the Consolidated Appropriations Act.*Completed:*

Reason	Date	FR Cite
Final Rule and Removal of Temporary Regulations: TD 9955. Final Rule Effective.	08/26/22 10/25/22	87 FR 52618

*Regulatory Flexibility Analysis Required: Yes.**Agency Contact:* Kari L. DiCecco,  
*Phone:* 202 317–5500, *Email:*  
*kari.l.dicecco@irsounsel.treas.gov.*  
*RIN:* 1545–BQ05

[FR Doc. 2023–02032 Filed 2–21–23; 8:45 am]

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Part XV

Environmental Protection Agency

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Semiannual Regulatory Agenda

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Ch. I****[FRL 10114-01-OA]****Fall 2022 Unified Agenda of Regulatory and Deregulatory Actions****AGENCY:** Environmental Protection Agency.**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** The Environmental Protection Agency (EPA) publishes the Semiannual Agenda of Regulatory and Deregulatory Actions online at <https://www.reginfo.gov> to periodically update the public. This document contains information about:

- Regulations in the Semiannual Agenda that are under development, completed, or canceled since the last agenda; and
- Reviews of regulations with small business impacts under Section 610 of the Regulatory Flexibility Act.

**FOR FURTHER INFORMATION CONTACT:** If you have questions or comments about a particular action, please get in touch with the agency contact listed in each agenda entry. If you have general questions about the Semiannual Agenda, please contact: Caryn Muellerleile ([muellerleile.caryn@epa.gov](mailto:muellerleile.caryn@epa.gov); 202-564-2855).

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**I. Introduction**

EPA is committed to a regulatory strategy that effectively achieves the

Agency's mission of protecting human health and the environment. EPA publishes the Semiannual Agenda of Regulatory and Deregulatory Actions to update the public about regulatory activity undertaken in support of this mission. In the Semiannual Agenda, EPA provides notice of our plans to review, propose, and issue regulations. EPA is committed to environmental protection that benefits all communities and encourages public participation and meaningful engagement in our regulatory activities and processes.

Additionally, EPA's Semiannual Agenda includes information about rules that may have a significant economic impact on a substantial number of small entities, and review of those regulations under the Regulatory Flexibility Act as amended.

In this document, EPA explains in greater detail the types of actions and information available in the Semiannual Agenda and actions that are currently undergoing review specifically for impacts on small entities.

**A. EPA's Regulatory Information**

"E-Agenda," "online regulatory agenda," and "semiannual regulatory agenda" all refer to the same comprehensive collection of information that, until 2007, was published in the **Federal Register**. Currently, this information is only available through an online database at <https://www.reginfo.gov/>.

"Regulatory Flexibility Agenda" refers to a document that contains information about regulations that may have a significant impact on a substantial number of small entities. We continue to publish this document in the **Federal Register** pursuant to the Regulatory Flexibility Act of 1980. This document is available at <https://www.govinfo.gov/app/collection/fr>.

"Unified Regulatory Agenda" refers to the collection of all agencies' agendas with an introduction prepared by the Regulatory Information Service Center facilitated by the U.S. General Services Administration.

"Regulatory Agenda Preamble" refers to the document you are reading now. It appears as part of the Regulatory Flexibility Agenda and introduces both EPA's Regulatory Flexibility Agenda and the e-Agenda.

"Section 610 Review" as required by the Regulatory Flexibility Act means a periodic review within ten years of promulgating a final rule that has or may have a significant economic impact on a substantial number of small entities. EPA maintains a list of these actions at <https://www.epa.gov/reg-flex/>

*section-610-reviews*. EPA has no Section 610 reviews in fall 2022.

**B. What key statutes and Executive Orders guide EPA's rule and policymaking process?**

Several environmental laws authorize EPA's actions, including but not limited to:

- Clean Air Act (CAA),
- Clean Water Act (CWA),
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund),
- Emergency Planning and Community Right-to-Know Act (EPCRA),
- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA),
- Resource Conservation and Recovery Act (RCRA),
- Safe Drinking Water Act (SDWA), and
- Toxic Substances Control Act (TSCA).

EPA must comply not only with environmental laws, but also with administrative legal requirements that apply to the issuance of regulations, such as the Administrative Procedure Act (APA), the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), the Unfunded Mandates Reform Act (UMRA), the Paperwork Reduction Act (PRA), the National Technology Transfer and Advancement Act (NTTAA), and the Congressional Review Act (CRA).

EPA also meets a number of requirements contained in numerous Executive Orders: 12866, "Regulatory Planning and Review" (58 FR 51735, Oct. 4, 1993), as supplemented by Executive Order 13563, "Improving Regulation and Regulatory Review" (76 FR 3821, Jan. 21, 2011); 12898, "Environmental Justice" (59 FR 7629, Feb. 16, 1994); 13045, "Children's Health Protection" (62 FR 19885, Apr. 23, 1997); 13132, "Federalism" (64 FR 43255, Aug. 10, 1999); 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, Nov. 9, 2000); 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

**C. How can you be involved in EPA's rule and policymaking process?**

You can make your voice heard by getting in touch with the contact person provided in each agenda entry. EPA encourages you to participate as early in the process as possible. You may also participate by commenting on proposed

rules published in the **Federal Register** (FR).

Instructions on how to submit your comments through <https://www.regulations.gov> are provided in each Notice of Proposed Rulemaking (NPRM). To be most effective, comments should contain information and data that support your position, and you also should explain why EPA should incorporate your suggestion in the rule or other type of action. You can be particularly helpful and persuasive if you provide examples to illustrate your concerns and offer specific alternative(s) to what has been proposed by EPA.

EPA believes its actions will be more cost effective and protective if the development process includes stakeholders working with us to help identify the most practical and effective solutions to environmental problems. EPA encourages you to become involved in its rule- and policymaking processes. For more information about EPA's efforts to increase transparency, participation, and collaboration in EPA activities, please visit <https://www.epa.gov/laws-regulations/get-involved-epa-regulations>.

## II. Semiannual Agenda of Regulatory and Deregulatory Actions

### A. What actions are included in the e-Agenda and the Regulatory Flexibility Agenda?

EPA includes regulations in the e-Agenda. However, there is no legal significance to the omission of an item from the agenda, and EPA generally does not include the following categories of actions:

- Administrative actions such as delegations of authority, changes of address, or phone numbers.
- Under the CAA: Revisions to state implementation plans; equivalent methods for ambient air quality monitoring; deletions from the new source performance standards source categories list; delegations of authority to states; area designations for air quality planning purposes.
- Under FIFRA: Registration-related decisions, actions affecting the status of currently registered pesticides, and data call-ins.
- Under the Federal Food, Drug, and Cosmetic Act: Actions regarding pesticide tolerances and food additive regulations.
- Under TSCA: Licensing actions and new chemical actions.
- Under RCRA: Authorization of State solid waste management plans and hazardous waste delisting petitions.
- Under the CWA: State Water Quality Standards, deletions from the

section 307(a) list of toxic pollutants, suspensions of toxic testing requirements under the National Pollutant Discharge Elimination System (NPDES), and delegations of NPDES authority to States.

- Under SDWA: Actions on State underground injection control programs.

Meanwhile, the Regulatory Flexibility Agenda includes:

- Actions likely to have a significant economic impact on a substantial number of small entities.
- Rules the Agency has identified for periodic review under section 610 of the RFA.

EPA has no reviews under section 610 of the RFA in this Agenda.

### B. How is the e-Agenda organized?

Online, you can choose how to sort the agenda entries by specifying the characteristics of the entries of interest in the desired individual data fields of the e-Agenda at <https://www.reginfo.gov>. You can sort based on the following characteristics: EPA subagency (such as Office of Water), stage of rulemaking as described in the following paragraphs, alphabetically by title, or the Regulation Identifier Number (RIN), which is assigned sequentially when an action is added to the agenda.

Each entry in the Agenda is associated with one of five rulemaking stages. The rulemaking stages are:

1. Pre-rule Stage—EPA's pre-rule actions generally are intended to determine whether the agency should initiate rulemaking. Pre-rulemakings may include anything that influences or leads to rulemaking; this would include Advance Notices of Proposed Rulemaking (ANPRMs), studies or analyses of the possible need for regulatory action.
2. Proposed Rule Stage—Proposed rulemaking actions include EPA's Notice of Proposed Rulemakings (NPRMs); these proposals are scheduled to publish in the **Federal Register** within the next year.
3. Final Rule Stage—Final rulemaking actions are those actions that EPA is scheduled to finalize and publish in the **Federal Register** within the next year.
4. Long-Term Actions—This section includes rulemakings for which the next scheduled regulatory action (such as publication of a NPRM or final rule) is twelve or more months into the future. We urge you to explore becoming involved even if an action is listed in the Long-Term category.
5. Completed Actions—EPA's completed actions are those that have been promulgated and published in the

**Federal Register** since publication of the spring 2022 Agenda. This category also includes actions that EPA is no longer considering and has elected to "withdraw" and the results of any RFA section 610 reviews.

### C. What information is in the Regulatory Flexibility Agenda and the e-Agenda?

The Regulatory Flexibility Agenda entries include only the nine categories of information that are required by the Regulatory Flexibility Act of 1980 and by **Federal Register** Agenda printing requirements: Sequence Number, RIN, Title, Description, Statutory Authority, Section 610 Review, if applicable, Regulatory Flexibility Analysis Required, Schedule and Contact Person. Note that the electronic version of the Agenda (E-Agenda) replicates each of these actions with more extensive information, described below.

E-Agenda entries include:

**Title:** a brief description of the subject of the regulation. The notation "Section 610 Review" follows the title if we are reviewing the rule as part of our periodic review of existing rules under section 610 of the RFA (5 U.S.C. 610).

**Priority:** Each entry is placed into one of the five following categories:

a. Economically Significant: Under Executive Order 12866, a rulemaking that may have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

b. Other Significant: A rulemaking that is not economically significant but is considered significant for other reasons. This category includes rules that may:

1. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.
2. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients; or
3. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles in Executive Order 12866.

c. Substantive, Nonsignificant: A rulemaking that has substantive impacts but is not Significant, Routine and Frequent, or Informational/Administrative/Other.

d. Routine and Frequent: A rulemaking that is a specific case of a recurring application of a regulatory program in the Code of Federal Regulations. If an action that would normally be classified Routine and

Frequent is reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, then we would classify the action as either “Economically Significant” or “Other Significant.”

e. **Informational/Administrative/Other:** An action that is primarily informational or pertains to an action outside the scope of Executive Order 12866.

**Major:** A rule is “major” under 5 U.S.C. 801 (Pub. L. 104–121) if it has resulted or is likely to result in an annual effect on the economy of \$100 million or more or meets other criteria specified in the Congressional Review Act.

**Unfunded Mandates:** Whether the rule is covered by section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). The Act requires that, before issuing an NPRM likely to result in a mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of more than \$100 million in 1 year, the agency prepare a written statement on federal mandates addressing costs, benefits, and intergovernmental consultation.

**Legal Authority:** The sections of the United States Code (U.S.C.), Public Law (Pub. L.), Executive Order (E.O.), or common name of the law that authorizes the regulatory action.

**CFR Citation:** The sections of the Code of Federal Regulations that would be affected by the action.

**Legal Deadline:** An indication of whether the rule is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to a NPRM, a Final Action, or some other action.

**Abstract:** A brief description of the problem the action will address.

**Timetable:** The dates and citations (if available) for all past steps and a projected date for at least the next step for the regulatory action. A date displayed in the form 10/00/23 means the agency is predicting the month and year the action will take place but not the day it will occur. For some entries, the timetable indicates that the date of the next action is “to be determined.”

**Regulatory Flexibility Analysis Required:** Indicates whether EPA has prepared or anticipates preparing a regulatory flexibility analysis under section 603 or 604 of the RFA. Generally, such an analysis is required for proposed or final rules subject to the RFA that EPA believes may have a significant economic impact on a substantial number of small entities.

**Small Entities Affected:** Indicates whether the rule is anticipated to have

any effect on small businesses, small governments, or small nonprofit organizations.

**Government Levels Affected:** Indicates whether the rule may have any effect on levels of government and, if so, whether the affected governments are State, local, tribal, or Federal.

**Federalism Implications:** Indicates whether the action is expected to have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

**Energy Impacts:** Indicates whether the action is a significant energy action under Executive Order 13211.

**Sectors Affected:** Indicates the main economic sectors regulated by the action. The regulated parties are identified by their North American Industry Classification System (NAICS) codes. These codes were created by the Census Bureau for collecting, analyzing, and publishing statistical data on the U.S. economy. There are more than 1,000 NAICS codes for sectors in agriculture, mining, manufacturing, services, and public administration.

**International Trade Impacts:** Indicates whether the action is likely to have international trade or investment effects, or otherwise be of international interest.

**Agency Contact:** The name, address, phone number, and email address, if available, of a person who is knowledgeable about the regulation.

**Additional Information:** Other information about the action including docket information.

**URLs:** For some actions, the internet addresses are included for reading copies of rulemaking documents, submitting comments on proposals, and getting more information about the rulemaking and the program of which it is a part.

**RIN:** The Regulation Identifier Number is used by OMB to identify and track rulemakings. The first four digits of the RIN correspond to the EPA office with lead responsibility for developing the action.

**D. What tools are available for mining Regulatory Agenda Data and for finding more about EPA rules and policies?**

#### 1. Federal Regulatory Dashboard

The <https://www.reginfo.gov> searchable database maintained by the Regulatory Information Service Center and OMB’s Office of Information and Regulatory Affairs (OIRA), allows users to view the Regulatory Agenda database (<https://www.reginfo.gov/public/do/eAgendaMain>), with options for

searching, displaying, and data transmission.

#### 2. Subject Matter EPA Websites

Some actions listed in the Agenda include a URL for an EPA-maintained website that provides additional information about the action.

#### 3. Public Dockets

When EPA publishes either an Advance Notice of Proposed Rulemaking (ANPRM) or a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**, the Agency typically establishes a docket to accumulate materials developed throughout the development process for that rulemaking. The docket serves as the repository for the collection of documents or information related to that Agency’s action or activity. EPA uses dockets primarily for rulemaking actions, but dockets may also be used for section 610 reviews and for various non-rulemaking activities, such as **Federal Register** documents seeking public comments on draft guidance, policy statements, information collection requests under the PRA, and other non-rule activities. Docket information should be in that action’s agenda entry. All of EPA’s public dockets can be located at <https://www.regulations.gov>. EPA particularly welcomes feedback on rulemakings from communities likely to be affected by these actions.

### III. Review of Regulations Under Section 610 of the Regulatory Flexibility Act

#### A. Reviews of Rules With Significant Impacts on a Substantial Number of Small Entities

Section 610 of the RFA requires that an agency review, within 10 years of promulgation, each rule that has or will have a significant economic impact on a substantial number of small entities. Currently, EPA has no Section 610 reviews underway.

#### B. What other special attention does EPA give to the impacts of rules on small businesses, small governments, and small nonprofit organizations?

For each of EPA’s rulemakings, consideration is given to whether there will be any adverse impact on any small entity. EPA attempts to fit the regulatory requirements, to the extent feasible, to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulation.

Under the RFA as amended by SBREFA, the Agency must prepare a formal analysis of the potential negative impacts on small entities, convene a

Small Business Advocacy Review Panel (proposed rule stage), and prepare a Small Entity Compliance Guide (final rule stage) unless the Agency certifies a rule will not have a significant economic impact on a substantial number of small entities. For more detailed information about the Agency's policy and practice with respect to

implementing the RFA/SBREFA, please visit EPA's RFA/SBREFA website at <https://www.epa.gov/reg-flex>.

#### IV. Thank You for Collaborating With Us

Finally, we would like to thank those of you who choose to join with us in making progress on the complex issues

involved in protecting human health and the environment. Collaborative efforts such as EPA's open rulemaking process are valuable tools for addressing the problems we face, and the regulatory agenda plays an important role in that process.

**Victoria Arroyo,**  
Associate Administrator, Office of Policy.

### 10—CLEAN AIR ACT—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
418 .....	National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations ( <b>Reg Plan Seq No. 169</b> ).	2060—AU37
419 .....	New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review ( <b>Reg Plan Seq No. 173</b> ).	2060—AV16
420 .....	Revisions to the Air Emission Reporting Requirements (AERR) ( <b>Reg Plan Seq No. 175</b> ) .....	2060—AV41

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

### 35—TSCA—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
421 .....	Methylene Chloride; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA) ( <b>Reg Plan Seq No. 184</b> ).	2070—AK70
422 .....	1-Bromopropane; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA) ( <b>Reg Plan Seq No. 185</b> ).	2070—AK73
423 .....	Trichloroethylene; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA) ( <b>Reg Plan Seq No. 187</b> ).	2070—AK83
424 .....	Perchloroethylene; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA) ( <b>Reg Plan Seq No. 188</b> ).	2070—AK84
425 .....	N-Methylpyrrolidone; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA) ( <b>Reg Plan Seq No. 189</b> ).	2070—AK85

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

### 35—TSCA—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
426 .....	TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances.	2070—AK67

### 35—TSCA—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
427 .....	Tiered Data Reporting to Inform Prioritization, Risk Evaluation and Risk Management Under the Toxic Substances Control Act (TSCA).	2070—AK62
428 .....	Cyclic Aliphatic Bromide Cluster (HBCD); Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA).	2070—AK71
429 .....	C.I. Pigment Violet 29; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA) .....	2070—AK87

**ENVIRONMENTAL PROTECTION AGENCY (EPA)**

10—Clean Air Act

Proposed Rule Stage

**418. National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization And Fumigation Operations [2060–AU37]**

*Regulatory Plan:* This entry is Seq. No. 169 in part II of this issue of the **Federal Register**.

RIN: 2060–AU37

**419. New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review [2060–AV16]**

*Regulatory Plan:* This entry is Seq. No. 173 in part II of this issue of the **Federal Register**.

RIN: 2060–AV16

**420. Revisions to the Air Emission Reporting Requirements (AERR) [2060–AV41]**

*Regulatory Plan:* This entry is Seq. No. 175 in part II of this issue of the **Federal Register**.

RIN: 2060–AV41

**ENVIRONMENTAL PROTECTION AGENCY (EPA)**

35—TSCA

Proposed Rule Stage

**421. Methylene Chloride; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA) [2070–AK70]**

*Regulatory Plan:* This entry is Seq. No. 184 in part II of this issue of the **Federal Register**.

RIN: 2070–AK70

**422. 1-Bromopropane; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA) [2070–AK73]**

*Regulatory Plan:* This entry is Seq. No. 185 in part II of this issue of the **Federal Register**.

RIN: 2070–AK73

**423. Trichloroethylene; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA) [2070–AK83]**

*Regulatory Plan:* This entry is Seq. No. 187 in part II of this issue of the **Federal Register**.

RIN: 2070–AK83

**424. Perchloroethylene; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA) [2070–AK84]**

*Regulatory Plan:* This entry is Seq. No. 188 in part II of this issue of the **Federal Register**.

RIN: 2070–AK84

**425. N-Methylpyrrolidone; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA) [2070–AK85]**

*Regulatory Plan:* This entry is Seq. No. 189 in part II of this issue of the **Federal Register**.

RIN: 2070–AK85

**ENVIRONMENTAL PROTECTION AGENCY (EPA)**

35—TSCA

Final Rule Stage

**426. TSCA Section 8(a)(7) Reporting and Recordkeeping Requirements for Perfluoroalkyl and Polyfluoroalkyl Substances [2070–AK67]**

*Legal Authority:* 15 U.S.C. 2607(a)(7) Toxic Substances Control Act

*Abstract:* EPA published a proposed rule on June 28, 2021, addressing reporting and recordkeeping requirements for Per- and Polyfluoroalkyl Substances (PFAS) under section 8(a)(7) of the Toxic Substances Control Act (TSCA). In accordance with obligations under TSCA section 8(a), as amended by section 7351 of the National Defense Authorization Act for Fiscal Year 2020, persons that manufacture (including import) or have manufactured these chemical substances in any year since January 1, 2011, would be subject to the reporting and recordkeeping requirements. In addition to fulfilling statutory obligations under TSCA, EPA expects that the final rule will enable EPA to better characterize the sources and quantities of manufactured PFAS in the United States. EPA solicited additional public comments on an Initial Regulatory Flexibility Analysis (IRFA) following the completion of a Small Business Advocacy Review (SBAR) Panel addressing the proposed PFAS reporting and recordkeeping requirements.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/28/21	86 FR 33926
NODA .....	11/25/22	87 FR 72439
NODA Comment Period End.	12/27/22	

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

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Stephanie Griffin, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7406M, Washington, DC 20460, *Phone:* 202 564–1463, *Email:* griffin.stephanie@epa.gov.

David Turk, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7406M, Washington, DC 20460; *Phone:* 202 566–1527, *Email:* turk.david@epa.gov.

RIN: 2070–AK67

**ENVIRONMENTAL PROTECTION AGENCY (EPA)**

35—TSCA

Long-Term Actions

**427. Tiered Data Reporting To Inform Prioritization, Risk Evaluation and Risk Management Under the Toxic Substances Control Act (TSCA) [2070–AK62]**

*Legal Authority:* 15 U.S.C. 2601 *et seq.* Toxic Substances Control Act

*Abstract:* EPA is developing a rulemaking under sections 8(a) and (d) of the Toxic Substances Control Act (TSCA) to establish reporting requirements based upon a chemical's status in the Risk Evaluation/Risk Management (RE/RM) Lifecycle and update the reporting requirements under the 40 CFR 711 Chemical Data Reporting (CDR) regulation. TSCA section 8(a) provides EPA the authority to require manufacturers and processors to report information known to or reasonably ascertainable by them including information on chemical identity and structure, manufacture, use, exposure, disposal, and health and environmental effects, and to maintain records of such information. Specifically, EPA is seeking occupational, environmental, and consumer exposure information. TSCA section 8(d) provides EPA the authority to require manufacturers, processors, and distributors to submit health and safety study information to the agency. EPA is developing this rule to obtain information about potential hazards and exposure pathways related to certain chemicals, particularly occupational, environmental, and consumer exposure information. This information is needed



to inform prioritization, risk evaluation, and risk management of the chemical substances under TSCA section 6.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/24	
Final Rule .....	05/00/25	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Susan Sharkey, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7406M, Washington, DC 20460, *Phone:* 202 564-8789, *Fax:* 202 564-4775, *Email:* sharkey.susan@epa.gov.

David Turk, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7406M, Washington, DC 20460, *Phone:* 202 566-1527, *Email:* turk.david@epa.gov.

*RIN:* 2070-AK62

**428. Cyclic Aliphatic Bromide Cluster (HBCD); Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA) [2070-AK71]**

*Legal Authority:* 15 U.S.C. 2605 Toxic Substances Control Act

*Abstract:* This proposed rulemaking will address the unreasonable risk of injury to health identified in the final risk evaluation for Cyclic Aliphatic Bromide Cluster (HBCD). Section 6(a) of the Toxic Substances Control Act (TSCA) requires EPA to eliminate unreasonable risk 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 HBCD, describing the conditions of use and presenting EPA's determinations of unreasonable risk, is in docket EPA-HQ-OPPT-2019-0237, with additional information in docket EPA-HQ-OPPT-2016-0735.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/00/24	
Final Rule .....	02/00/25	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Alie Muneer, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564-6369, *Email:* muneer.alie@epa.gov.

Ana Corado, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, Mail Code 7408M, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564-0140, *Email:* corado.ana@epa.gov.

*RIN:* 2070-AK71

**429. C.I. Pigment Violet 29; Rulemaking Under Section 6(a) of the Toxic Substances Control Act (TSCA) [2070-AK87]**

*Legal Authority:* 15 U.S.C. 2605 Toxic Substances Control Act

*Abstract:* This proposed rulemaking will address unreasonable risks of injury to health identified in the final risk evaluation for C.I. Pigment Violet 29.

Section 6 of the Toxic Substances Control Act (TSCA) requires EPA to address unreasonable risks of injury to health or the environment that the Administrator has determined are presented by a chemical substance under the conditions of use. EPA's risk evaluation for C.I. Pigment Violet 29, describing the conditions of use and presenting EPA's determination of unreasonable risk, is in docket EPA-HQ-OPPT-2018-0604, with revised risk determination and additional information in docket EPA-HQ-OPPT-2016-0725.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/24	
Final Rule .....	05/00/25	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Dyllan Taylor, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7404T, Washington, DC 20460, *Phone:* 202 564-2913, *Email:* taylor.dyllan@epa.gov.

Robert Courtnage, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7404T, Washington, DC 20460, *Phone:* 202 566-1081, *Email:* courtnage.robert@epa.gov.

*RIN:* 2070-AK87

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Part XVI

General Services Administration

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Semiannual Regulatory Agenda

**GENERAL SERVICES  
ADMINISTRATION****41 CFR Chapters 101, 102, 105, 300,  
301, 302, 303, and 304****48 CFR Chapter 5****Unified Agenda of Federal Regulatory  
and Deregulatory Actions****AGENCY:** General Services  
Administration (GSA).**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** This agenda announces the proposed regulatory actions that GSA plans for the next 12 months and those that were completed since the fall 2021 edition. This agenda was developed under the guidelines of Executive Orders 12866 “Regulatory Planning and Review,” and 13563 “Improving Regulation and Regulatory Review.” GSA’s purpose in publishing this agenda is to allow interested persons an

opportunity to participate in the rulemaking process. GSA also invites interested persons to recommend existing significant regulations for review to determine whether they should be modified or eliminated. The public may provide comments on rules via <http://www.regulations.gov>.

The Unified Agenda, including previous versions, are available at [www.reginfo.gov](http://www.reginfo.gov). Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), GSA’s printed agenda entries include only:

(1) Rules that are in the Agency’s regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Any rules that the Agency has identified for periodic review under

section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act’s Agenda requirements. Additional information on these entries is available in the Unified Agenda. In addition, for fall editions of the Agenda, the entire Regulatory Plan will continue to be printed in the **Federal Register**, as in past years, including GSA’s regulatory plan.

**FOR FURTHER INFORMATION CONTACT:** Lois Mandell, Division Director, Regulatory Secretariat Division, 1800 F Street NW, 2nd Floor, Washington, DC 20405–0001, 202–501–2735.

Dated: September 23, 2022.

**Krystal J. Brumfield,**  
*Associate Administrator, Office of  
Government-wide Policy.*

**GENERAL SERVICES ADMINISTRATION—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
430 .....	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2019–G503, Streamlining GSA Commercial Contract Clause Requirements.	3090–AK09
431 .....	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G510, Federal Supply Schedule Economic Price Adjustment.	3090–AK20
432 .....	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G511, Updated Guidance for Non-Federal Entities Access to Federal Supply Schedules.	3090–AK21
433 .....	General Service Acquisition Regulation (GSAR); GSAR Case 2020–G512, System for Award Management Representation for Leases.	3090–AK22
434 .....	General Services Acquisition Regulation (GSAR); GSAR Case 2021–G505, Amending Prescriptions for Including FAR Provisions and Clauses in Lease Procurements.	3090–AK36
435 .....	General Services Administration Acquisition Regulations (GSAR); GSAR 2021–G520, Economic Price Adjustment for Deregulated Electric Supplies.	3090–AK48
436 .....	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2021–G530, Extension of Federal Minimum Wage to Lease Acquisitions.	3090–AK51
437 .....	General Service Acquisition Regulation (GSAR); GSAR Case 2022–G513, Updating Payments Clause ....	3090–AK55
438 .....	General Service Acquisition Regulation (GSAR); GSAR Case 2022–G514, Standardizing Federal Supply Schedule Clause and Provision Prescriptions.	3090–AK58
439 .....	General Services Acquisition Regulation (GSAR); GSAR Case 2022–G517 Single-use Plastic Packaging Reduction.	3090–AK60

**GENERAL SERVICES ADMINISTRATION—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
440 .....	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G505, Clarify Commercial Products and Services Contract Terms and Conditions.	3090–AK18
441 .....	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2021–G522, Contract Requirements for High-Security Leased Space.	3090–AK39
442 .....	General Services Administration Acquisition Regulation (GSAR); GSAR 2021–G527, Immediate and Highest-Level Owner for High-Security Leased Space.	3090–AK44

**GENERAL SERVICES ADMINISTRATION—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
443 .....	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G534, Extension of Certain Telecommunication Prohibitions to Lease Acquisitions.	3090–AK29

## GENERAL SERVICES ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
444 .....	General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G504, Federal Supply Schedule Catalog Management.	3090–AK17

**GENERAL SERVICES ADMINISTRATION (GSA)***Office of Acquisition Policy*

Proposed Rule Stage

**430. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2019–G503, Streamlining GSA Commercial Contract Clause Requirements [3090–AK09]**

*Legal Authority:* 40 U.S.C. 121(c)  
*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to streamline requirements for GSA commercial contracts. This rule will update GSAR Clauses 552.212–71 and 552.212–72 to remove any requirements that are not necessary by law or Executive Order.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/22	
NPRM Comment Period End.	02/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Johnnie McDowell, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 718–6112, *Email:* johnnie.mcdowell@gsa.gov.  
*RIN:* 3090–AK09

**431. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G510, Federal Supply Schedule Economic Price Adjustment [3090–AK20]**

*Legal Authority:* 40 U.S.C. 121(c)  
*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to clarify, update, and incorporate Federal Supply Schedule (FSS) program policies and procedures regarding economic price adjustment, including updating related prescriptions and clauses. This rule will provide unique guidance for contracts based on commercial price lists or not, and contracts with data reporting requirements or not.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/00/23	
NPRM Comment Period End.	09/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Thomas O'Linn, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 445–0390, *Email:* thomas.olinn@gsa.gov.

*RIN:* 3090–AK20**432. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G511, Updated Guidance for Non-Federal Entities Access to Federal Supply Schedules [3090–AK21]**

*Legal Authority:* 40 U.S.C. 121(c); 40 U.S.C. 502

*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to streamline and clarify the requirements for use of Federal Supply Schedules by eligible non-Federal entities, such as state and local governments. The rule is intended to increase understanding of the existing guidance and expand access to GSA sources of supply by eligible non-Federal entities, as authorized by historic statutes including the Federal Supply Schedules Usage Act of 2010. This rule supports underserved communities, promoting equity in the Federal Government.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/23	
NPRM Comment Period End.	03/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Thomas O'Linn, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 445–0390, *Email:* thomas.olinn@gsa.gov.

*RIN:* 3090–AK21**433. General Service Acquisition Regulation (GSAR); GSAR Case 2020–G512, System for Award Management Representation for Leases [3090–AK22]**

*Legal Authority:* 40 U.S.C. 121(c)  
*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to remove the requirement for lease offerors to have an active System for Award Management (SAM) registration when submitting offers and instead allow offers up until the time of award to obtain an active SAM registration. Entities seeking Federal leases differ from the typical entities seeking Federal contracts in that common practice is to form a new entity for every new lease offer. Requiring representations from these entities prior to offer submission restricts competition. In addition, the tools in SAM typically used in the Government's evaluation of offers do not add value when evaluating lease offers.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/22	
NPRM Comment Period End.	02/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Clarence Harrison, Procurement Analyst, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 227–7051, *Email:* clarence.harrison@gsa.gov.  
*RIN:* 3090–AK22

**434. General Services Acquisition Regulation (GSAR); GSAR Case 2021–G505, Amending Prescriptions for Including Far Provisions and Clauses in Lease Procurements [3090–AK36]**

*Legal Authority:* 40 U.S.C. 121(c)  
*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to revise the prescriptions for FAR provisions and clauses that apply to lease solicitations and contracts. Additionally, GSA is proposing to make conforming changes to some provision and clause titles and numbers listed to

align with the FAR, along with other editorial changes.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	07/00/23 09/00/23	

*Regulatory Flexibility Analysis  
Required: Yes.*

*Agency Contact:* Marten Wallace, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, Phone: 202 969-7736, Email: marten.wallace@gsa.gov. RIN: 3090-AK36

**435. General Services Administration Acquisition Regulations (GSAR); GSAR 2021-G520, Economic Price Adjustment for Deregulated Electric Supplies [3090-AK48]**

*Legal Authority:* 40 U.S.C. 121(c)

*Abstract:* The General Services

Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to revise internal agency approval procedures to allow the use of an economic price adjustment clause for deregulated electric supplies under fixed-price contracts. This rule will better account for regional variability in prices, portions of which are controlled by the Federal Energy Regulatory Commission under section 205 and 206 of the Federal Power Act and other regulatory bodies.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	04/00/23 06/00/23	

*Regulatory Flexibility Analysis  
Required: Yes.*

*Agency Contact:* Stephen Carroll, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, Phone: 817 253-7858, Email: stephen.carroll@gsa.gov. RIN: 3090-AK48

**436. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2021-G530, Extension of Federal Minimum Wage to Lease Acquisitions [3090-AK51]**

*Legal Authority:* 40 U.S.C. 121(c)

*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to extend the requirements of

Executive Order 14026 (Increasing the Minimum Wage for Federal Contractors) and Department of Labor regulations (29 CFR part 23) to lease acquisitions where the Davis Bacon Act applies by requiring inclusion of the related Federal Acquisition Regulation (FAR) clause. Generally, the FAR does not apply to leasehold acquisitions of real property. However, several FAR clauses have been adopted based on requirements through GSAR part 570. The Federal minimum wage requirements apply to Government lease acquisitions where the Davis Bacon Act applies and extension of the FAR requirements will ensure compliance. The Executive order seeks to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by increasing to \$15.00 the hourly minimum wage paid to those contractors. This rule promotes economic resilience, and improves the buying power of U.S. citizens.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	03/00/23 05/00/23	

*Regulatory Flexibility Analysis  
Required: Yes.*

*Agency Contact:* Johnnie McDowell, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, Phone: 202 718-6112, Email: johnnie.mcdowell@gsa.gov. RIN: 3090-AK51

**437. General Service Acquisition Regulation (GSAR); GSAR Case 2022-G513, Updating Payments Clause [3090-AK55]**

*Legal Authority:* 40 U.S.C. 121(c)

*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to remove the agency supplemental clause regarding payments for non-commercial fixed price contracts for supplies or services. This payments clause provides that, in certain transactions, the Government must pay a contractor without submission of an invoice or voucher. GSA has determined that this is no longer in the best interest of the Government. This proposed rule will additionally amend any corresponding references to the clause.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	02/00/23	

Action	Date	FR Cite
NPRM Comment Period End.	04/00/23	

*Regulatory Flexibility Analysis*

*Required: Yes.*

*Agency Contact:* Byron Boyer, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, Phone: 817 850-5580, Email: byron.boyer@gsa.gov. RIN: 3090-AK55

**438. General Service Acquisition Regulation (GSAR); GSAR Case 2022-G514, Standardizing Federal Supply Schedule Clause and Provision Prescriptions [3090-AK58]**

*Legal Authority:* 40 U.S.C. 121(c)

*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to standardize the identification of Federal Supply Schedule (FSS) clauses, provisions, and references. GSA will clarify the distinction between Federal Supply Schedule and the Multiple Award Schedule (MAS) Program. GSA will also clarify the applicability of FSS clauses and provisions for FSS contracts managed by GSA and the Department of Veterans Affairs.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	01/00/23 03/00/23	

*Regulatory Flexibility Analysis*

*Required: Yes.*

*Agency Contact:* Adina Torberntsson, General Services Administration, 1800 F Street NW, Washington, DC 20405, Phone: 303 236-2677, Email: adina.torberntsson@gsa.gov. RIN: 3090-AK58

**439. General Services Acquisition Regulation (GSAR); GSAR Case 2022-G517 Single-Use Plastic Packaging Reduction [3090-AK60]**

*Legal Authority:* 40 U.S.C. 121(c)

*Abstract:* The General Services Administration (GSA) is exploring 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. To learn more, GSA published an Advanced Notice of Proposed Rulemaking (ANPRM) to ask industry about what a change to the single-use industry would entail. The

questions focus on packaging materials with the overall intent of addressing not only the items that the Government intentionally consumes, but those products that the Government unintentionally consumes (such as packaging) that then has to be disposed of once the item is delivered.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	07/07/22	87 FR 40476
ANPRM Comment Period End.	09/06/22	
Comment Period Extended.	09/08/22	87 FR 54937
NPRM .....	02/00/23	
NPRM Comment Period End.	04/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Adina Torberntsson, General Services Administration, 1800 F Street NW, Washington, DC 20405, Phone: 303 236-2677, Email: [adina.torberntsson@gsa.gov](mailto:adina.torberntsson@gsa.gov).  
RIN: 3090-AK60

## GENERAL SERVICES ADMINISTRATION (GSA)

### Office of Acquisition Policy

#### Final Rule Stage

#### 440. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020-G505, Clarify Commercial Products and Services Contract Terms and Conditions [3090-AK18]

*Legal Authority:* 40 U.S.C. 121(c)  
*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to clarify commercial products and services contract terms and conditions. This rule will update GSAR Clause 552.212-4 to clarify the prescription and language applicable for the different clause alternates.

*Timetable:*

Action	Date	FR Cite
Final Rule .....	12/13/22	87 FR 76111
Final Rule Effective.	01/12/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Johnnie McDowell, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, Phone: 202 718-6112, Email: [johnnie.mcdowell@gsa.gov](mailto:johnnie.mcdowell@gsa.gov)  
RIN: 3090-AK18

#### 441. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2021-G522, Contract Requirements for High-Security Leased Space [3090-AK39]

*Legal Authority:* 40 U.S.C. 121(c); Pub. L. 116-276

*Abstract:* The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to incorporate contractor disclosure requirements and access limitations for high-security leased space pursuant to the Secure Federal Leases Act. Covered entities are required to identify whether the beneficial owner of a high-security leased space, including an entity involved in the financing thereof, is a foreign person or entity when first submitting a proposal and annually thereafter. This rule supports the national security priority.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/27/21	86 FR 73219
NPRM Comment Period End.	02/25/22	
Final Rule .....	08/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Stephen Carroll, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, Phone: 817 253-7858, Email: [stephen.carroll@gsa.gov](mailto:stephen.carroll@gsa.gov).  
RIN: 3090-AK39

#### 442. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2021-G527, Immediate and Highest-Level Owner for High-Security Leased Space [3090-AK44]

*Legal Authority:* 40 U.S.C. 121(c)  
*Abstract:* GSA is amending the General Services Administration Acquisition Regulation (GSAR) to implement certain requirements outlined in the Secure Federal LEASEs Act (Pub. L. 116-276). The Act addresses the risks of foreign ownership of Government-leased real estate and requires the disclosure of ownership information for high-security space leased to accommodate a Federal agency. This rule supports the national security priority.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule Effective.	06/30/21	
Interim Final Rule	07/01/21	86 FR 34966

Action	Date	FR Cite
Interim Final Rule Comment Period End.	08/30/21	
Final Rule .....	08/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Stephen Carroll, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, Phone: 817 253-7858, Email: [stephen.carroll@gsa.gov](mailto:stephen.carroll@gsa.gov).

RIN: 3090-AK44

## GENERAL SERVICES ADMINISTRATION (GSA)

### Office of Acquisition Policy

#### Long-Term Actions

#### 443. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020-G534, Extension of Certain Telecommunication Prohibitions to Lease Acquisitions [3090-AK29]

*Legal Authority:* 40 U.S.C. 121(c); 5 U.S.C. 801; Pub. L. 115-232 sec. 889

*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to prohibit procurement from certain covered entities using covered equipment and services in lease acquisitions pursuant to section 889 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019. The rule will implement the section 889 requirements in lease acquisitions by requiring inclusion of the related Federal Acquisition Regulation (FAR) provisions and clause. This rule supports the national security priority.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/00/23	
NPRM Comment Period End.	12/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Stephen Carroll, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, Phone: 817 253-7858, Email: [stephen.carroll@gsa.gov](mailto:stephen.carroll@gsa.gov).

RIN: 3090-AK29

GENERAL SERVICES  
ADMINISTRATION (GSA)

Completed Actions

**444. General Services Administration Acquisition Regulation (GSAR); GSAR Case 2020–G504, Federal Supply Schedule Catalog Management [3090–AK17]**

*Legal Authority:* 40 U.S.C. 121(c)  
*Abstract:* The General Services Administration (GSA) is withdrawing case.

*Completed:*

Reason	Date	FR Cite
Withdrawn .....	09/08/22	

*Regulatory Flexibility Analysis Required:* Yes.  
*Agency Contact:* Thomas O’Linn,  
*Phone:* 202 445–0390, *Email:* [thomas.olinn@gsa.gov](mailto:thomas.olinn@gsa.gov).  
*RIN:* 3090–AK17

[FR Doc. 2023–02034 Filed 2–21–23; 8:45 am]  
**BILLING CODE 6820–34–P**





# FEDERAL REGISTER

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Part XVII

Office of Personnel Management

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Semiannual Regulatory Agenda

**OFFICE OF PERSONNEL  
MANAGEMENT**

**5 CFR Ch. I**

**Regulatory Agenda**

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** The following Office of  
Personnel Management (OPM)  
regulations are scheduled for  
development or review during the 6-  
month period following publication.  
This agenda carries out OPM's  
responsibilities to publish a semiannual  
agenda under Executive Order 12866,  
"Regulatory Planning and Review," and  
the Regulatory Flexibility Act (5 U.S.C.

chapter 6). This publication does not  
impose a binding obligation on OPM  
with regard to any specific item on the  
agenda. Regulatory action in addition to  
the items listed is not precluded.

**FOR FURTHER INFORMATION CONTACT:**  
Steve Hickman, (202) 606-1000.

**Kiran A. Ahuja,**  
*Director.*

OFFICE OF PERSONNEL MANAGEMENT—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
445 .....	Requirements Related to Surprise Billing; Part II .....	3206-AO29

**OFFICE OF PERSONNEL  
MANAGEMENT (OPM)**

Completed Actions

**445. Requirements Related to Surprise  
Billing; Part II [3206-AO29]**

*Legal Authority:* Pub. L. 116-260,  
Division BB, title I and title II

*Abstract:* This final rule implements  
provisions related to the independent  
dispute resolution processes included in  
the Public Health Service Act sections

2799A-1(c) and 2799A-2(b), as added  
by sections 102(d), 103 and 105 of the  
No Surprises Act.

*Completed:*

Reason	Date	FR Cite
Interim Final Rule	10/07/21	86 FR 55980
Interim Final Rule Effective.	10/07/21	
Interim Final Rule Comment Pe- riod End.	12/06/21	

*Regulatory Flexibility Analysis  
Required:* Yes.

*Agency Contact:* Padma Babubhai  
Shah, *Phone:* 202 606-4056, *Email:*  
*padma.shah@opm.gov.*

*RIN:* 3206-AO29

[FR Doc. 2023-02245 Filed 2-21-23; 8:45 am]

**BILLING CODE 3280-F5-P**



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Part XVIII

Small Business Administration

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Semiannual Regulatory Agenda

**SMALL BUSINESS ADMINISTRATION****13 CFR Ch. I****Semiannual Regulatory Agenda**

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** This semiannual Regulatory Agenda (Agenda) is a summary of current and projected rulemakings and completed actions of the Small Business Administration (SBA). This summary information is intended to enable the public to be more aware of, and effectively participate in, SBA's regulatory activities. Accordingly, SBA invites the public to submit comments on any aspect of this Agenda.

**FOR FURTHER INFORMATION CONTACT:**

**General**

Please direct general comments or inquiries to Daniel Kane, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; (202) 744-2509; [Daniel.Kane@sba.gov](mailto:Daniel.Kane@sba.gov). This phone number can also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

**Specific**

Please direct specific comments and inquiries on individual regulatory activities identified in this Agenda to the individual listed in the summary of the regulation as the point of contact for that regulation.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (RFA) requires SBA to publish in the **Federal Register** a semiannual regulatory flexibility agenda describing those Agency rules that are likely to have a significant economic impact on a substantial number of small entities (5 U.S.C. 602). The summary information published in the **Federal Register** is limited to those rules. Additional information regarding all of the rulemakings SBA expects to consider in the next 12 months is included in the Federal Government's unified Regulatory Agenda, which will be available online at [www.reginfo.gov](http://www.reginfo.gov) in a format that offers users enhanced ability to obtain information about SBA's rules.

**Isabella Casillas Guzman,**  
Administrator.

**SMALL BUSINESS ADMINISTRATION—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
446 .....	Small Business Development Center Program Revisions .....	3245-AE05
447 .....	Small Business Size Standards; Alternative Size Standard for 7(a), 504, and Disaster Loan Programs .....	3245-AG16
448 .....	National Defense Authorization Act of 2020, Credit for Lower Tier Subcontracting and Other Amendments .....	3245-AH28
449 .....	Small Business Lending Company (SBLC) Moratorium Rescission and Removal of the Requirement for a Loan Authorization.	3245-AH92
450 .....	Affiliation in Small Business Procurement Programs; Women-Owned Small Business Program .....	3245-AH97

**SMALL BUSINESS ADMINISTRATION—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
451 .....	Small Business Timber Set-Aside Program .....	3245-AG69
452 .....	Small Business Size Standards: Manufacturing and Industries With Employee Based Size Standards in Other Sectors Except Wholesale Trade and Retail Trade.	3245-AH09
453 .....	Small Business Size Standards: Adjustment of Monetary Based Size Standards for Inflation .....	3245-AH17
454 .....	Small Business Size Standards: Adjustment of Monetary Based Size Standards, Disadvantage Thresholds, and 8(a) Eligibility Thresholds for Inflation.	3245-AH93

**SMALL BUSINESS ADMINISTRATION—COMPLETED ACTIONS**

Sequence No.	Title	Regulation Identifier No.
455 .....	Small Business Size Standards: Wholesale Trade and Retail Trade .....	3245-AH10
456 .....	Small Business Size Standards: Adoption of 2022 North American Industry Classification System for Size Standards.	3245-AH89

**SMALL BUSINESS ADMINISTRATION (SBA)****Proposed Rule Stage****446. Small Business Development Center Program Revisions [3245-AE05]**

*Legal Authority:* 15 U.S.C. 634(b)(6); 15 U.S.C. 648

*Abstract:* This rule proposes to update the Small Business Development Center (SBDC) program regulations by proposing to amend: (1) procedures for approving when a new Lead SBDC

Center Director is selected; (2) procedures and requirements regarding findings and disputes resulting from financial exams, programmatic reviews, accreditation reviews, and other SBA oversight activities; (3) procedures regarding the determination to affect suspension, termination or non-renewal of an SBDC's cooperative agreement; and (4) provisions regarding the collection and use of the individual SBDC client data.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	04/02/15	80 FR 17708
ANPRM Comment Period End.	06/01/15	
NPRM .....	01/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Rachel Newman-Karton, Program Manager, Small Business Administration, 409 Third Street SW, Washington, DC 20416,

Phone: 202–619–1816, Email: [rachel.newman-karton@sba.gov](mailto:rachel.newman-karton@sba.gov).  
RIN: 3245–AE05

#### 447. Small Business Size Standards; Alternative Size Standard for 7(a), 504, and Disaster Loan Programs [3245–AG16]

*Legal Authority:* Pub. L. 111–240, sec. 1116

*Abstract:* SBA will propose amendments its size eligibility criteria for Business Loans, certified development company (CDC) loans under title V of the Small Business Investment Act (504) and economic injury disaster loans (EIDL). For the SBA 7(a) Business Loan Program and the 504 program, the amendments will provide an alternative size standard for loan applicants that do not meet the small business size standards for their industries. The Small Business Jobs Act of 2010 (Jobs Act) established alternative size standards that apply to both of these programs until SBA's Administrator establishes other alternative size standards. For the disaster loan program, the amendments will provide an alternative size standard for loan applicants that do not meet the Small Business Size Standard for their industries. SBA loan program alternative size standards do not affect other Federal Government programs, including Federal procurement.

##### *Timetable:*

Action	Date	FR Cite
ANPRM .....	03/22/18	83 FR 12506
ANPRM Comment Period End.	05/21/18	
NPRM .....	05/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416, Phone: 202–205–7189, Fax: 202–205–6390, Email: [khem.sharma@sba.gov](mailto:khem.sharma@sba.gov).

RIN: 3245–AG16

#### 448. National Defense Authorization Act of 2020, Credit for Lower Tier Subcontracting and Other Amendments [3245–AH28]

*Legal Authority:* Pub. L. 116–92  
*Abstract:* Section 870 of the National Defense Authorization Act of 2020 (NDAA 2020) made a change that will require SBA to amend its regulations. Specifically, the language of NDAA 2020 requires SBA to alter the method and means of accounting for lower tier small business subcontracting. This proposed rule may also contain several

smaller changes that might be necessary to implement this provision and other provisions in NDAA 2020.

##### *Timetable:*

Action	Date	FR Cite
NPRM .....	02/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Brenda J. Fernandez, Analyst, Office of Policy, Planning and Liaison, Small Business Administration, 409 Third Street SW, Washington, DC 20416, Phone: 202–205–7337, Email: [brenda.fernandez@sba.gov](mailto:brenda.fernandez@sba.gov).

RIN: 3245–AH28

#### 449. Small Business Lending Company (SBLC) Moratorium Rescission and Removal of the Requirement for a Loan Authorization [3245–AH92]

*Legal Authority:* Sec. 3(r) and 7(a) of the Small Business Act

*Abstract:* SBA intends to publish a notice of proposed rulemaking in order to receive comments from the public and the lending industry regarding the proposal to lift the moratorium on permitting new Small Business Lending Companies (SBLC). SBA intends to also propose removal of duplicative forms and other collections of information for the Agency's business loan programs.

##### *Timetable:*

Action	Date	FR Cite
NPRM .....	11/07/22	87 FR 66936
NPRM Comment Period End.	01/06/23	
Final Rule .....	04/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dianna L. Seaborn, Director, Office of Financial Assistance, Small Business Administration, 409 Third Street SW, Washington, DC 20416, Phone: 202–205–3645, Email: [dianna.seaborn@sba.gov](mailto:dianna.seaborn@sba.gov).

RIN: 3245–AH92

#### 450. • Affiliation in Small Business Procurement Programs; Women-Owned Small Business Program [3245–AH97]

*Legal Authority:* 15 U.S.C. 632(a); 15 U.S.C. 637(m)

*Abstract:* Following revisions to the requirements in SBA's 8(a) Business Development and Service-Disabled Veteran-Owned Small Business programs, SBA is issuing conforming revisions to its affiliation rules that govern all of the small-business procurement programs and to the Women-Owned Small Business program. These revisions will ensure consistent requirements for ownership

and control across SBA's procurement programs.

##### *Timetable:*

Action	Date	FR Cite
NPRM .....	09/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Sam Le, Director, Office of Policy Planning and Liaison, Office of Government Contracting and Business Devel, Small Business Administration, 409 3rd Street SW, Washington, DC 20416, Phone: 202–619–1789.

RIN: 3245–AH97

#### SMALL BUSINESS ADMINISTRATION (SBA)

Final Rule Stage

#### 451. Small Business Timber Set-Aside Program [3245–AG69]

*Legal Authority:* 15 U.S.C. 631; 15 U.S.C. 644(a)

*Abstract:* The U.S. Small Business Administration (SBA or Agency) is amending its Small Business Timber Set-Aside Program (the Program) regulations. The Small Business Timber Set-Aside Program is rooted in the Small Business Act, which tasked SBA with ensuring that small businesses receive a fair proportion of the total sales of government property. Accordingly, the Program requires Timber sales to be set aside for small business when small business participation falls below a certain amount. SBA considered comments received during the Advance Notice of Proposed Rulemaking and Notice of Proposed Rulemaking processes, including on issues such as, but not limited to, whether the saw timber volume purchased through stewardship timber contracts should be included in calculations, and whether the appraisal point used in set-aside sales should be the nearest small business mill. In addition, SBA is considering data from the timber industry to help evaluate the current program and economic impact of potential changes.

##### *Timetable:*

Action	Date	FR Cite
ANPRM .....	03/25/15	80 FR 15697
ANPRM Comment Period End.	05/26/15	
NPRM .....	09/27/16	81 FR 66199
NPRM Comment Period End.	11/28/16	
Final Rule .....	11/00/23	

*Regulatory Flexibility Analysis*  
Required: Yes.

*Agency Contact:* Sam Le, Director, Office of Policy Planning and Liaison, Office of Government Contracting and Business Devel, Small Business Administration, 409 3rd Street SW, Washington, DC 20416, *Phone:* 202–619–1789.

*RIN:* 3245–AG69

**452. Small Business Size Standards: Manufacturing and Industries With Employee Based Size Standards in Other Sectors Except Wholesale Trade and Retail Trade [3245–AH09]**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* The Small Business Jobs Act of 2010 (Jobs Act) requires SBA to conduct every five years a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. As part of the second 5-year review of size standards under the Jobs Act, in this proposed rule, SBA will evaluate all industries in North American Industry Classification System (NAICS) Sector 31–33 (Manufacturing) and industries with employee-based size standards in other sectors except Wholesale Trade and Retail Trade and make necessary adjustments to their size standards. This is one of a series of proposed rules that will examine groups of NAICS sectors. SBA will apply its revised Size Standards Methodology, which is available on its website at <http://www.sba.gov/size>, to this proposed rule.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/26/22	87 FR 24752
NPRM Comment Period End.	06/27/22	
Final Rule .....	03/00/23	

*Regulatory Flexibility Analysis*  
Required: Yes.

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email:* [khem.sharma@sba.gov](mailto:khem.sharma@sba.gov).

*RIN:* 3245–AH09

**453. Small Business Size Standards: Adjustment of Monetary Based Size Standards for Inflation [3245–AH17]**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* In this final rule, the U.S. Small Business Administration (SBA or Agency) adjusts all monetary based industry size standards (*i.e.*, receipts, assets, net worth, and net income) for inflation since the last adjustment in 2014. In accordance with its regulations

in 13 CFR 121.102(c), SBA is required to review the effects of inflation on its monetary standards at least once every five years and adjust them, if necessary. In addition, the Small Business Jobs Act of 2010 (Jobs Act) also requires SBA to conduct every five years a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. This action will restore the small business eligibility of businesses that have lost that status due to inflation.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	07/18/19	84 FR 34261
Interim Final Rule Effective.	08/19/19	
Interim Final Rule Comment Period End.	09/16/19	
Final Action .....	12/00/22	

*Regulatory Flexibility Analysis*

Required: Yes.

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email:* [khem.sharma@sba.gov](mailto:khem.sharma@sba.gov).

*RIN:* 3245–AH17

**454. Small Business Size Standards: Adjustment of Monetary Based Size Standards, Disadvantage Thresholds, and 8(a) Eligibility Thresholds for Inflation [3245–AH93]**

*Legal Authority:* 15 U.S.C. 632(a); 15 U.S.C. 637(a)(6)(A)

*Abstract:* SBA intends to issue this rulemaking to adjust its monetary small business size standards (*i.e.*, receipts, net income, net worth, and financial assets) for the effects of inflation that have occurred since the last inflation adjustment, which was effective on August 19, 2019. SBA is required by its regulations in 13 CFR 121.102(c) to review the effects of inflation on its monetary standards at least once every five years. As in previous adjustments, SBA will apply the Gross Domestic Product (GDP) price index as a measure of inflation. This action will restore small business eligibility to businesses that have lost that status due to inflation.

In addition, SBA intends to adjust other monetary thresholds in its regulations that are otherwise not adjusted for inflation under FAR 1.109. These thresholds primarily are those used in the 8(a) Business Development and the Economically Disadvantaged Women-Owned Small Business (EDWOSB) programs to determine

economic disadvantage. Others are used to maintain eligibility for the 8(a) program. In some cases, these thresholds have not been adjusted for 25 years. This action will permit small businesses to retain eligibility as economically disadvantaged and eligible for the 8(a) program, despite an increase in inflation.

SBA will publicize the rule via the Small Business Procurement Advisory Council, the Integrated Acquisition Environment, [fbo.gov](http://fbo.gov), press releases, publication of this rule in the **Federal Register**, emails to interested parties, and the size standards website at [www.sba.gov/size](http://www.sba.gov/size).

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	11/17/22	87 FR 69118
Interim Final Rule Effective.	12/19/22	
Interim Final Rule Comment Period End.	01/17/23	
Final Rule .....	03/00/23	

*Regulatory Flexibility Analysis*

Required: Yes.

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email:* [khem.sharma@sba.gov](mailto:khem.sharma@sba.gov).

*RIN:* 3245–AH93

**SMALL BUSINESS ADMINISTRATION (SBA)**

Completed Actions

**455. Small Business Size Standards: Wholesale Trade and Retail Trade [3245–AH10]**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* The Small Business Jobs Act of 2010 (Jobs Act) requires SBA to conduct every five years a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. As part of the second 5-year review of size standards under the Jobs Act, in this proposed rule, SBA will evaluate all industries in North American Industry Classification System (NAICS) Sector 42 (Wholesale Trade) and Sector 44–45 (Retail Trade) and make necessary adjustments to their size standards. This is one of a series of proposed rules that will examine groups of NAICS sectors. SBA will apply its revised Size Standards Methodology, which is available on its website at <http://www.sba.gov/size>, to this proposed rule.

*Completed:*

Reason	Date	FR Cite
Final Rule ..... Final Rule Effective.	06/14/22 07/14/22	87 FR 35869

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Khem Raj Sharma,  
Phone: 202 205-7189, Fax: 202 205-6390, Email: [khem.sharma@sba.gov](mailto:khem.sharma@sba.gov).

*RIN:* 3245-AH10

**456. Small Business Size Standards: Adoption of 2022 North American Industry Classification System for Size Standards [3245-AH89]**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* This will amend SBA's Small Business Size Regulations by

incorporating the Office of Management and Budget's (OMB) 2022 revision of the North American Industry Classification System (NAICS) into its table of small business size standards. NAICS 2022 created 111 new industries involving 147 NAICS 2017 industries in 11 Sectors, mostly in Sector 44-45 (Retail Trade), followed by Sector 31-33 (Manufacturing), and Sector 51 (Information). Of the 111 new industries, 79 were formed by merging two or more of 124 industries or their parts. In addition, the NAICS 2022 revised titles, 6-digit codes, or definitions of the 32 other NAICS 2017 industries or their parts. As a result, the size standards for some existing industries or parts will change. Similar to the adoptions of prior OMB revisions to NAICS in 2002, 2007, 2012, and 2017,

SBA will adopt the NAICS 2022 revision to its table of size standards, effective the beginning of the Federal government's new fiscal year (October 1, 2022).

*Completed:*

Reason	Date	FR Cite
NPRM .....	07/05/22	87 FR 40034
Final Rule .....	09/29/22	87 FR 59240
Final Rule Effective.	10/01/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Khem Raj Sharma,  
Phone: 202 205-7189, Fax: 202 205-6390, Email: [khem.sharma@sba.gov](mailto:khem.sharma@sba.gov).

*RIN:* 3245-AH89

[FR Doc. 2023-02035 Filed 2-21-23; 8:45 am]

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Part XIX

Department of Defense

General Services Administration

National Aeronautics and Space Administration

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Semiannual Regulatory Agenda

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Ch. 1****Semiannual Regulatory Agenda**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** This agenda provides summary descriptions of regulations being developed by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in

compliance with Executive Order 12866 “Regulatory Planning and Review.” This agenda is being published to allow interested persons an opportunity to participate in the rulemaking process. The Regulatory Secretariat Division has attempted to list all regulations pending at the time of publication, except for minor and routine or repetitive actions; however, unanticipated requirements may result in the issuance of regulations that are not included in this agenda. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the dates shown.

Published proposed rules may be reviewed in their entirety at the Government’s rulemaking website at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Lois Mandell, Division Director, Regulatory Secretariat Division, 1800 F Street NW, 2nd Floor, Washington, DC 20405–0001, 202–501–4755.

**SUPPLEMENTARY INFORMATION:** DoD, GSA, and NASA, under their several statutory authorities, jointly issue and maintain the FAR through periodic issuance of changes published in the **Federal Register** and produced electronically as Federal Acquisition Circulars (FACs).

The electronic version of the FAR, including changes, can be accessed on the FAR website at <http://www.acquisition.gov/far>.

Dated: September 28, 2022.

**William F. Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

**DOD/GSA/NASA (FAR)—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
457 .....	Federal Acquisition Regulation (FAR); FAR Case 2017–016, Controlled Unclassified Information (CUI) .....	9000–AN56
458 .....	Federal Acquisition Regulation (FAR); FAR Case 2018–014, Increasing Task-Order Level Competition .....	9000–AN73
459 .....	Federal Acquisition Regulation (FAR); FAR Case 2019–015, Improving Consistency Between Procurement & Non-Procurement Procedures on Suspension and Debarment.	9000–AN98
460 .....	Federal Acquisition Regulation (FAR); FAR Case 2019–018, Federal Acquisition Supply Chain Security Act of 2018.	9000–AO01
461 .....	Federal Acquisition Regulation (FAR); FAR Case 2020–005, Explanations to Unsuccessful Offerors on Certain Orders Under Task and Delivery Order Contracts.	9000–AO08
462 .....	Federal Acquisition Regulation (FAR); FAR Case 2020–008, Prohibition on Criminal History Inquiries by Contractors Prior to Conditional Offer.	9000–AO11
463 .....	Federal Acquisition Regulation (FAR); FAR Case 2020–010, Small Business Innovation Research and Technology Transfer Programs.	9000–AO12
464 .....	Federal Acquisition Regulation (FAR); FAR Case 2020–016, Rerepresentation of Size and Socioeconomic Status.	9000–AO18
465 .....	Federal Acquisition Regulation (FAR); FAR Case 2021–001, Increased Efficiencies With Regard to Certified Mail, In-Person Business, Mail, Notarization, Original Documents, Seals, and Signatures.	9000–AO19
466 .....	FAR Acquisition Regulation (FAR); FAR Case 2021–005; Disclosure of Beneficial Owner in Federal Contracting.	9000–AO23
467 .....	Federal Acquisition Regulation (FAR); FAR Case 2021–009, Protests of Orders Set Aside for Small Business.	9000–AO26
468 .....	Federal Acquisition Regulation (FAR); FAR Case 2021–011, Past Performance Ratings for Small Business Joint Venture Members and Small Business First-Tier Subcontractors.	9000–AO28
469 .....	Federal Acquisition Regulation (FAR); FAR Case 2021–012, 8(a) Program .....	9000–AO29
470 .....	Federal Acquisitions Regulation (FAR); FAR Case 2021–013, Access to Past Performance Information ....	9000–AO30
471 .....	Federal Acquisition Regulation (FAR); FAR Case 2021–015, Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk.	9000–AO32
472 .....	Federal Acquisition Regulation (FAR); FAR Case 2021–016, Minimizing the Risk of Climate Change in Federal Acquisitions.	9000–AO33
473 .....	Federal Acquisition Regulation (FAR); FAR Case 2021–017, Cyber Threat and Incident Reporting and Information Sharing.	9000–AO34
474 .....	Federal Acquisition Regulation (FAR); FAR Case 2021–019, Standardizing Cybersecurity Requirements for Unclassified Information Systems.	9000–AO35
475 .....	Federal Acquisition Regulations (FAR) FAR Case 2021–020, Limitations on Subcontracting .....	9000–AO36
476 .....	Federal Acquisition Regulation (FAR); FAR Case 2022–006, Sustainable Procurement .....	9000–AO43
477 .....	Federal Acquisition Regulation (FAR); FAR Case 2022–009, Certification of Service-Disabled Veteran-Owned Small Businesses.	9000–AO46
478 .....	Federal Acquisition Regulation (FAR); FAR CASE 2023–003, Prohibition on the Use of Reverse Auctions for Complex, Specialized, or Substantial Design and Construction Services.	9000–AO51

## DOD/GSA/NASA (FAR)—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
479 .....	Federal Acquisition Regulation: FAR Case 2016–005; Effective Communication Between Government and Industry.	9000–AN29
480 .....	FAR Acquisition Regulation (FAR); FAR Case 2015–038, Reverse Auction Guidance .....	9000–AN31
481 .....	Federal Acquisition Regulation (FAR); FAR Case 2017–005, Whistleblower Protection for Contractor Employees.	9000–AN32
482 .....	Federal Acquisition Regulation (FAR); FAR Case 2017–014, Use of Acquisition 360 to Encourage Vendor Feedback.	9000–AN43
483 .....	Federal Acquisition Regulation (FAR); FAR Case 2018–017, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.	9000–AN83
484 .....	Federal Acquisition Regulation (FAR); FAR Case 2019–008, Small Business Program Amendments .....	9000–AN91
485 .....	Federal Acquisition Regulation (FAR); FAR Case 2019–009, Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment.	9000–AN92
486 .....	Federal Acquisition Regulation (FAR); FAR Case 2020–007, Accelerated Payments Applicable to Contracts With Certain Small Business Concerns.	9000–AO10
487 .....	Federal Acquisition Regulation (FAR); FAR Case 2020–011, Implementation of FASC Exclusion Orders ...	9000–AO13
488 .....	Federal Acquisition Regulation (FAR); FAR Case 2021–014, Increasing the Minimum Wage for Contractors.	9000–AO31
489 .....	Federal Acquisition Regulation (FAR); FAR Case 2022–003, Use of Project Labor Agreement for Federal Construction Projects.	9000–AO40
490 .....	Federal Acquisition Regulation (FAR); FAR Case 2022–011, Nondisplacement of Qualified Workers Under Service Contracts.	9000–AO48

## DOD/GSA/NASA (FAR)—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
491 .....	Federal Acquisition Regulation (FAR); FAR Case 2018–006; Definition of Subcontract .....	9000–AN66
492 .....	Federal Acquisition Regulation (FAR); FAR Case 2018–013, Exemption of Commercial and COTS Item Contracts From Certain Laws and Regulations.	9000–AN72

## DOD/GSA/NASA (FAR)—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
493 .....	Federal Regulation Acquisition (FAR); FAR Case 2017–019, Policy on Joint Ventures .....	9000–AN59
494 .....	Federal Acquisition Regulation (FAR); FAR Case 2018–020, Construction Contract Administration .....	9000–AN78
495 .....	Federal Acquisition Regulation (FAR); FAR Case 2019–007, Update of Historically Underutilized Business Zone Program.	9000–AN90
496 .....	Federal Acquisition Regulation (FAR); FAR Case 2020–013, Certification of Women-Owned Small Businesses.	9000–AO17
497 .....	Federal Acquisition Regulation (FAR); FAR Case 2021–008, Amendments to the FAR Buy American Act Requirements.	9000–AO22
498 .....	Federal Acquisition Regulations (FAR); FAR Case 2021–010, Subcontracting to Puerto Rican and Other Small Businesses.	9000–AO27

**DEPARTMENT OF DEFENSE/  
GENERAL SERVICES  
ADMINISTRATION/NATIONAL  
AERONAUTICS AND SPACE  
ADMINISTRATION (FAR)**

## Proposed Rule Stage

**457. Federal Acquisition Regulation  
(FAR); FAR Case 2017–016, Controlled  
Unclassified Information (CUI) [9000–  
AN56]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement the National Archives and Records Administration (NARA)

Controlled Unclassified Information (CUI) program of Executive Order 13556 of November 4, 2010 as implemented in NARA's implementing regulations at 32 CFR 2002, and implement the OMB Memorandum M–17–12, entitled Preparing for and Responding to a Breach of Personally Identifiable Information (PII). This rule will apply the CUI program requirements in Federal contracts in a uniform manner to protect CUI. This rule is one element of a larger strategy to improve the Government's efforts to identify, deter, protect against, detect and respond to increasing sophisticated threat actions targeting Federal contractors.

*Timetable:*

Action	Date	FR Cite
Proposed Rule ....	01/00/23	
NPRM Comment Period End.	03/00/23	

*Regulatory Flexibility Analysis  
Required:* Yes.

*Agency Contact:* Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, Phone: 202 208–4949, Email: michaelo.jackson@gsa.gov.

*RIN:* 9000–AN56

**458. Federal Acquisition Regulation (FAR); FAR Case 2018–014, Increasing Task-Order Level Competition [9000–AN73]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 876 of the John S. McCain National Defense Authorization Act for fiscal year 2019, which would provide civilian agencies with an exception to the existing statutory requirement to include price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals for all contracts. The exception would only apply to IDIQ contracts and to Federal Supply Schedule contracts for services that are priced at an hourly rate. Furthermore, the exception would only apply in those instances where the Government intends to make a contract award to all qualifying offerors, thus affording maximum opportunity for effective competition at the task order level. An offeror would be qualified only if it is a responsible source and submits a proposal that conforms to the requirements of the solicitation, meets any technical requirements, and is otherwise eligible for award.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/23	
NPRM Comment Period End.	08/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 295–7548, *Email:* [curtis.glover@gsa.gov](mailto:curtis.glover@gsa.gov).

*RIN:* 9000–AN73

**459. Federal Acquisition Regulation (FAR); FAR Case 2019–015, Improving Consistency Between Procurement & Non-Procurement Procedures on Suspension and Debarment [9000–AN98]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to bring the FAR and the Non-procurement Common Rule (NCR) procedures on suspension and debarment into closer alignment. The FAR covers procurement matters and the NCR covers other transactions, such as grants, cooperative

agreements, contracts of assistance, loans and loan guarantees.

The Government uses suspension and debarment procedures to exercise business judgment. These procedures give Federal officials a discretionary means to exclude parties from participation in certain transactions, while affording those parties due process.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/23	
NPRM Comment Period End.	03/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 295–7548, *Email:* [curtis.glover@gsa.gov](mailto:curtis.glover@gsa.gov).

*RIN:* 9000–AN98

**460. Federal Acquisition Regulation (FAR); FAR Case 2019–018, Federal Acquisition Supply Chain Security Act of 2018 [9000–AO01]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to partially implement a section of the Federal Acquisition Supply Chain Security Act of 2018. This law provides executive agency authorities for determining and mitigating supply chain risks in procurements involving controlled unclassified information, information technology, and telecommunications. The law allows executive agencies to exclude sources or covered articles from any executive agency procurement action, including source selection and consent for a contractor to subcontract.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/23	
NPRM Comment Period End.	08/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Marissa Ryba, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 314 586–1280, *Email:* [marissa.ryba@gsa.gov](mailto:marissa.ryba@gsa.gov).

*RIN:* 9000–AO01

**461. Federal Acquisition Regulation (FAR); FAR Case 2020–005, Explanations to Unsuccessful Offerors on Certain Orders Under Task and Delivery Order Contracts [9000–AO08]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 874 of the NDAA for FY 2020. For awards of certain task or delivery orders, section 874 provides unsuccessful offerors the opportunity to request in writing an explanation as to why their offer was unsuccessful. Contracting offers are required to provide a brief explanation, including the rationale for award and an evaluation of the significant weak or deficient factors in the offeror's offer.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/00/23	
NPRM Comment Period End.	06/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 208–4949, *Email:* [michaelo.jackson@gsa.gov](mailto:michaelo.jackson@gsa.gov).

*RIN:* 9000–AO08

**462. Federal Acquisition Regulation (FAR); FAR Case 2020–008, Prohibition on Criminal History Inquiries by Contractors Prior to Conditional Offer [9000–AO11]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 1123 of the NDAA for FY 2020 (Pub. L. 116–92), which added at 41 U.S.C. 4714 and 10 U.S.C. 2339 prohibitions related to criminal history inquiries on individuals competing for or applying to work on Federal contracts. Per the statute, a contractor may not request criminal history record information on an applicant for a position related to work under a contract before the contractor has extended a conditional offer to the applicant for that position. In addition, the Federal Government may not request criminal history record information on an individual or sole proprietor who is competing on a Federal Government contract, unless that individual is the apparently successful offeror. This proposed rule implements the statutory prohibition

and the associated procedures and exceptions.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	05/00/23 07/00/23	

*Regulatory Flexibility Analysis  
Required: Yes.*

*Agency Contact:* Jennifer Hawes, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969-7386, *Email:* jennifer.hawes@gsa.gov.

*RIN:* 9000-AO11

**463. Federal Acquisition Regulation (FAR); FAR Case 2020-010, Small Business Innovation Research and Technology Transfer Programs [9000-AO12]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement changes to the U.S. Small Business Administration (SBA) Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Policy Directive issued (May 2, 2019). The proposed changes include updating FAR 27 to add reference to the STTR program, revise: definitions, allocation of rights, protection period, SBIR/STTR rights notice, data rights marking provisions, and add language to FAR 6.302-5(b) to acknowledge the unique competition requirements for SBIR/STTR Phase III contracts permitted by the Small Business Act.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	01/00/23 03/00/23	

*Regulatory Flexibility Analysis  
Required: Yes.*

*Agency Contact:* Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605-2868, *Email:* mahruba.uddowla@gsa.gov.

*RIN:* 9000-AO12

**464. Federal Acquisition Regulation (FAR); FAR Case 2020-016, Rerepresentation of Size and Socioeconomic Status [9000-AO18]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the FAR to

implement statutory requirements as implemented by the Small Business Administration's final rule published October 16, 2020 (85 FR 66146), requiring contractors to rerepresent its size and economic status for all set-aside orders issued under full and open multiple-award contract. Additionally, rerepresentation is required for orders issued under a small business set-aside MAC where the orders are further set aside exclusively for a particular socioeconomic category and the required socioeconomic status differs from the underlying multiple-award contract. Orders issued under any FSS are exempt from the requirement to rerepresent size and or socioeconomic status.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	02/00/23 04/00/23	

*Regulatory Flexibility Analysis  
Required: Yes.*

*Agency Contact:* Dana Bowman, Procurement Analyst, DoD/GSA/NASA (FAR), DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 803-3188, *Email:* dana.bowman@gsa.gov.

*RIN:* 9000-AO18

**465. Federal Acquisition Regulation (FAR); FAR Case 2021-001, Increased Efficiencies With Regard to Certified Mail, In-Person Business, Mail, Notarization, Original Documents, Seals, and Signatures [9000-AO19]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation to increase flexibilities and efficiencies regarding certified mail, in-person business, mail, notarization, original documents, seals, and signatures using digital and virtual technology. This would streamline certain essential contracting procedures.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	07/00/23 09/00/23	

*Regulatory Flexibility Analysis  
Required: Yes.*

*Agency Contact:* Zenaida Delgado, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969-7207, *Email:* zenaida.delgado@gsa.gov.

*RIN:* 9000-AO19

**466. FAR Acquisition Regulation (FAR); FAR Case 2021-005; Disclosure of Beneficial Owner in Federal Contracting [9000-AO23]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement sections 885 and 6403 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. Section 885 requires that the Federal Awardee Performance and Integrity Information System include identifying information on the beneficial owner of a Federal contractor that is a corporation. Paragraph (c) of section 6403 directs the FAR to be changed to require certain offerors to disclose beneficial ownership information in their offers for contracts over the simplified acquisition threshold.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	09/00/23 11/00/23	

*Regulatory Flexibility Analysis  
Required: Yes.*

*Agency Contact:* Zenaida Delgado, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969-7207, *Email:* zenaida.delgado@gsa.gov.

*RIN:* 9000-AO23

**467. Federal Acquisition Regulation (FAR); FAR Case 2021-009, Protests of Orders Set Aside for Small Business [9000-AO26]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement the requirements in SBA's final rule issued on October 16, 2020 regarding size protests on set-aside orders under multiple-award contracts that were not set-aside; socioeconomic status protests on set-aside orders where the required status differs from that of the underlying multiple-award contract; and the authority for SBA's Associate General Counsel for Procurement Law to initiate size protest.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	02/00/23 04/00/23	

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Dana Bowman, Procurement Analyst, DoD/GSA/NASA (FAR), DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, Phone: 202 803-3188, Email: dana.bowman@gsa.gov.  
RIN: 9000-AO26

**468. Federal Acquisition Regulation (FAR); FAR Case 2021-011, Past Performance Ratings for Small Business Joint Venture Members and Small Business First-Tier Subcontractors [9000-AO28]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement the statutory requirements at 15 U.S.C. 644(e)(4)(B)(i) and 15 U.S.C. 644(q)(1)(B) as implemented by the Small Business Administration (SBA) final rule published on October 16, 2020 (85 FR 66146). The statute 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 of the Federal agency. SBA's final rule also gives contracting officers discretion to consider past performance and experience of first-tier subcontractors for other procurements where the first-tier subcontractors are specifically identified in the proposal where appropriate.

Additionally this rule will implement section 868 of the National Defense Authorization Act for fiscal year 2021 as implemented in SBA's final rule published on July 22, 2022 (87 FR 43731). Section 868 provided 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), and (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. This rule promotes equity in Federal procurement.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/23	
NPRM Comment Period End.	07/00/23	

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Malissa Jones, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, Phone: 571 882-4687, Email: malissa.jones@gsa.gov.  
RIN: 9000-AO28

**469. Federal Acquisition Regulation (FAR); FAR Case 2021-012, 8(a) Program [9000-AO29]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the SBA, in its final rule published in the **Federal Register** on October 16, 2020, to the 8(a) Business Development Program to eliminate or reduce unnecessary or excessive burdens on 8(a) Participants. This rule promotes equity in Federal procurement.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/15/22	87 FR 76598
NPRM Comment Period End.	02/13/23	

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Dana Bowman, Procurement Analyst, DoD/GSA/NASA (FAR), DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, Phone: 202 803-3188, Email: dana.bowman@gsa.gov.  
RIN: 9000-AO29

**470. Federal Acquisitions Regulation (FAR); FAR Case 2021-013, Access to Past Performance Information [9000-AO30]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to clarify language at FAR 42.1503(d) regarding restrictions on the release of past performance information in the Contractor Performance Assessment Reporting System (CPARS) to other than Government personnel to perform value added services to the Government. Artificial intelligence (e.g., machine learning) may improve the workforce's ability to leverage the use of contractor performance information in informing future contract award decisions and other related efforts.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/00/23	

Action	Date	FR Cite
NPRM Comment Period End.	10/00/23	

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, Phone: 202 295-7548, Email: curtis.glover@gsa.gov.  
RIN: 9000-AO30

**471. Federal Acquisition Regulation (FAR); FAR Case 2021-015, Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk [9000-AO32]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 5(b)(i) of Executive Order 14030, Climate-Related Financial Risk. Section 5(b)(i) directs the FAR Council to consider amending the FAR to require major Federal suppliers to publicly disclose greenhouse gas emissions and climate-related financial risk and to set science-based reduction targets.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/14/22	87 FR 68312
NPRM Comment Period End.	01/13/23	

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Jennifer Hawes, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, Phone: 202 969-7386, Email: jennifer.hawes@gsa.gov.  
RIN: 9000-AO32

**472. Federal Acquisition Regulation (FAR); FAR Case 2021-016, Minimizing the Risk of Climate Change in Federal Acquisitions [9000-AO33]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 5(b)(ii) of Executive Order 14030, Climate-Related Financial Risk. Section 5(b)(ii) directs the FAR Council to consider amending the FAR to ensure that major agency procurements minimize the risk of climate change and to require consideration of the social cost of greenhouse gas emissions in procurement decisions for major agency procurements.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	10/15/21	86 FR 57404
Comment Period Extended.	12/07/21	86 FR 69218
ANPRM Comment Period End.	01/13/22	
NPRM .....	05/00/23	
NPRM Comment Period End.	07/00/23	

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Jennifer Hawes, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969-7386, *Email:* jennifer.hawes@gsa.gov.

RIN: 9000-AO33

#### 473. Federal Acquisition Regulation (FAR); FAR Case 2021-017, Cyber Threat and Incident Reporting and Information Sharing [9000-AO34]

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to increase the sharing of information about cyber threats and incident information between the Government and certain providers, pursuant to OMB recommendations, in accordance with section 2(b)-(c), and Department of Homeland Security recommendations, in accordance with section 8(b), of Executive Order 14028, Improving the Nation's Cybersecurity. In addition, requires certain contractors to report cyber incidents to the Federal Government to facilitate effective cyber incident response and remediation, pursuant to Department of Homeland Security recommendations in accordance with sections 2(g)(i) of Executive Order 14028.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/22	
NPRM Comment Period End.	02/00/23	

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 295-7548, *Email:* curtis.glover@gsa.gov.

RIN: 9000-AO34

#### 474. Federal Acquisition Regulation (FAR); FAR Case 2021-019, Standardizing Cybersecurity Requirements for Unclassified Information Systems [9000-AO35]

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation to standardize common cybersecurity contractual requirements across Federal agencies for unclassified Federal information systems, pursuant to Department of Homeland Security recommendations in accordance with sections 2(i) and 8(b) of Executive Order 14028, Improving the Nation's Cybersecurity. As a result, this rule will ensure Federal information systems are better positioned to protect from cybersecurity threats.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/22	
NPRM Comment Period End.	02/00/23	

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Carrie Moore, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 571 300-5917, *Email:* carrie.moore@gsa.gov.

RIN: 9000-AO35

#### 475. Federal Acquisition Regulations (FAR) FAR Case 2021-020, Limitations on Subcontracting [9000-AO36]

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement Small Business Administration (SBA) changes to the limitations on subcontracting in SBA's final rules published on May 31, 2016, November 29, 2019, and October 16, 2020, which implemented sections of the National Defense Authorization Acts (NDAA) for Fiscal Years 2016 and 2017, and the Recovery Improvements for Small Entities After Disaster Act of 2015 (RISE Act).

Generally, this rule will clarify matters related to the limitations on subcontracting for small businesses. Changes will be made in areas such as: exclusions of other direct costs from the limitations on subcontracting for services; the application of the limitations on subcontracting to similarly situated entities, the application of the nonmanufacturer rule to kit assemblers; and the application of the limitations on subcontracting to

construction contracts that also contain supplies and or services.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/00/23	
NPRM Comment Period End.	05/00/23	

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Carrie Moore, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 571 300-5917, *Email:* carrie.moore@gsa.gov.

RIN: 9000-AO36

#### 476. Federal Acquisition Regulation (FAR); FAR Case 2022-006, Sustainable Procurement [9000-AO43]

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, and Office of Management and Budget Memorandum M-22-06, requirements for the procurement of sustainable products and services. This proposed rule will also reorganize FAR part 23 for consistency and clarity, and include statutory updates to definition of "biobased product" (7 U.S.C 8101 and 8102) for the purposes of agency affirmative procurement programs.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/23	
NPRM Comment Period End.	07/00/23	

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Jennifer Hawes, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969-7386, *Email:* jennifer.hawes@gsa.gov.

RIN: 9000-AO43

#### 477. • Federal Acquisition Regulation (FAR); FAR Case 2022-009, Certification of Service-Disabled Veteran-Owned Small Businesses [9000-AO46]

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA will amend the Federal Acquisition Regulation (FAR) to implement Small Business Administration (SBA) changes to the certification program for Service-Disabled Veteran-Owned Small

Businesses (SDVOSB), as required by section 862 of the National Defense Authorization Act for Fiscal Year 2021. Section 862 transfers responsibility for SDVOSB certification to the SBA as of January 1, 2023. This rule will clarify the certification requirements for SDVOSBs to be eligible for the award of a sole source or set-aside SDVOSB contract. This rule promotes equity in Federal procurement.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/00/23	
NPRM Comment Period End.	06/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Carrie Moore, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 571 300–5917, *Email:* carrie.moore@gsa.gov.

*RIN:* 9000–AO46

**478. • Federal Acquisition Regulation (FAR); FAR Case 2023–003, Prohibition on the Use of Reverse Auctions for Complex, Specialized, or Substantial Design and Construction Services [9000–AO51]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a proposed rule to amend the Federal Acquisition Regulation (FAR) to implement policies addressing the prohibition on the use of a reverse auction for the award of a contract for complex, specialized, or substantial design and construction services. These prohibitions are the result of Public Law 11728, which amended the Consolidated Appropriations Act, 2020, to correct a provision on the prohibition on the use of a reverse auction. Reverse auctions differ from traditional auctions in that sellers compete against one another to provide the lowest price or highest-value offer to a buyer.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/00/23	
NPRM Comment Period End.	06/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 295–7548, *Email:* curtis.glover@gsa.gov.

*RIN:* 9000–AO51

**DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)**

*Final Rule Stage*

**479. Federal Acquisition Regulation: FAR Case 2016–005; Effective Communication Between Government and Industry [9000–AN29]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement section 887 of the NDAA for FY 2016 (Pub. L. 114–92). This law provides that Government acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry. This change will permit and encourage Government acquisition personnel to engage in responsible and constructive exchanges with industry as part of market research as long as those exchanges are consistent with existing laws and regulations and promote a fair competitive environment.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/29/16	81 FR 85914
NPRM Comment Period End.	03/02/17	
Final Rule .....	12/01/22	87 FR 73902
Final Rule Effective.	12/30/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 208–4949, *Email:* michaelo.jackson@gsa.gov.

*RIN:* 9000–AN29

**480. FAR Acquisition Regulation (FAR); FAR Case 2015–038, Reverse Auction Guidance [9000–AN31]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement policies addressing the effective use of reverse auctions. Reverse auctions involve offerors lowering their pricing over multiple rounds of bidding in order to win Federal contracts. This change incorporates guidance from the Office of Federal Procurement Policy (OFPP) memorandum, “Effective Use of Reverse Auctions,” which was issued in response to recommendations from the

GAO report, *Reverse Auctions: Guidance is Needed to Maximize Competition and Achieve Cost Savings* (GAO–14–108). Reverse auctions are one tool used by Federal agencies to increase competition and reduce the cost of certain items. Reverse auctions differ from traditional auctions in that sellers compete against one another to provide the lowest price or highest-value offer to a buyer. This change to the FAR will include guidance that will standardize agencies’ use of reverse auctions to help agencies maximize competition and savings when using reverse auctions.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/07/20	85 FR 78815
NPRM Comment Period End.	02/05/21	
Final Rule .....	03/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 295–7548, *Email:* curtis.glover@gsa.gov.

*RIN:* 9000–AN31

**481. Federal Acquisition Regulation (FAR); FAR Case 2017–005, Whistleblower Protection for Contractor Employees [9000–AN32]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement 41 U.S.C. 4712, “Enhancement of Contractor Protection From Reprisal for Disclosure of Certain Information,” and makes the pilot program permanent. The pilot was enacted on January 2, 2013, by section 828 of the National Defense Authorization Act (NDAA) for fiscal year (FY) 2013. The rule clarifies that contractors and subcontractors are prohibited from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing to any of the entities such as agency Inspector Generals and Congress information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract; a gross waste of Federal funds; an abuse of authority relating to a Federal contract; a substantial and specific danger to public health or safety; or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract.) This rule enhances



whistleblower protections for contractor employees by making permanent the protection for disclosure of the aforementioned information and ensuring that the prohibition on reimbursement for legal fees accrued in defense against reprisal claims applies to both contractors and subcontractors.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/26/18	83 FR 66223
NPRM Comment Period End.	02/25/19	
Final Rule .....	01/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 295–7548, *Email:* [curtis.glover@gsa.gov](mailto:curtis.glover@gsa.gov).

*RIN:* 9000–AN32

**482. Federal Acquisition Regulation (FAR); FAR Case 2017–014, Use of Acquisition 360 To Encourage Vendor Feedback [9000–AN43]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to address the solicitation of contractor feedback on both contract formation and contract administration activities. Agencies would consider this feedback, as appropriate, to improve the efficiency and effectiveness of their acquisition activities. The rule will create FAR policy to encourage regular feedback in accordance with agency practice (both for contract formation and administration activities) and a standard FAR solicitation provision to support a sustainable model for broadened use of the Acquisition 360 survey to elicit feedback on the pre-award and debriefing processes in a consistent and standardized manner. Agencies will be able to use the solicitation provision to notify interested sources that a procurement is part of the Acquisition 360 survey and encourage stakeholders to voluntarily provide feedback on their experiences of the pre-award process.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	07/23/18	83 FR 34820
ANPRM Comment Period End.	09/21/18	
NPRM .....	09/15/20	85 FR 57177
NPRM Comment Period End.	11/16/20	
Final Rule .....	01/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 295–7548, *Email:* [curtis.glover@gsa.gov](mailto:curtis.glover@gsa.gov).

*RIN:* 9000–AN43

**483. Federal Acquisition Regulation (FAR); FAR Case 2018–017, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment [9000–AN83]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA amended the Federal Acquisition Regulation (FAR) to implement section 889 (a)(1)(A) of the National Defense Authorization Act (NDAA) for FY 19 (Pub. L. 115–232). Section 889(a)(1)(A) prohibits the Government from procuring covered telecommunications equipment and services from Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Technology Company, or Dahua Technology Company, to include any subsidiaries or affiliates. Provisions have been added to the FAR which require that an offeror represent at an entity level in SAM, and if applicable on an offer-by-offer basis, if the offeror will or will not provide any covered telecommunications equipment or services to the Government. If an offeror responds in an offer that it will provide covered telecommunications, the offeror will need to provide additional disclosures. This FAR rule is needed to protect U.S. networks against cyber activities conducted through Chinese Government-supported telecommunications equipment and services.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	08/13/19	84 FR 40216
Interim Final Rule Comment Period End.	10/15/19	
Interim Final Rule	12/13/19	84 FR 68314
Interim Final Rule Effective.	12/13/19	
Interim Final Rule Comment Period End.	02/11/20	
Final Rule .....	04/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Malissa Jones, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 571 882–4687, *Email:* [malissa.jones@gsa.gov](mailto:malissa.jones@gsa.gov).

*RIN:* 9000–AN83

**484. Federal Acquisition Regulation (FAR); FAR Case 2019–008, Small Business Program Amendments [9000–AN91]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are amending the Federal Acquisition Regulation (FAR) to implement regulatory changes proposed by the Small Business Administration regarding small business programs. The proposed regulatory changes include the timing of the determination of size status for multiple-award contracts for which price is not evaluated at the contract level; the grounds for size-status protests; and the grounds for socioeconomic status protests.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/24/22	87 FR 10327
NPRM Comment Period End.	04/25/22	
Final Rule .....	01/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Malissa Jones, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 571 882–4687, *Email:* [malissa.jones@gsa.gov](mailto:malissa.jones@gsa.gov).

*RIN:* 9000–AN91

**485. Federal Acquisition Regulation (FAR); FAR Case 2019–009, Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment [9000–AN92]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA amended the Federal Acquisition Regulation (FAR) to implement paragraph (a)(1)(B) of section 889 of the National Defense Authorization Act (NDAA) for FY 19 (Pub. L. 115–232). Beginning two years from the enacted date, paragraph (a)(1)(B) of section 889 prohibits the Government from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment and services from Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Technology Company, or Dahua Technology Company, to include any subsidiaries or affiliates. This FAR rule is needed to protect U.S. networks against cyber activities conducted through Chinese Government-supported telecommunications equipment and

services. Paragraph (a)(1)(A) of section 889 is being implemented separately through FAR Case 2018–017.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	07/14/20	85 FR 42665
Interim Final Rule Effective.	08/13/20	
Interim Final Rule	08/27/20	85 FR 53126
Interim Final Rule Comment Period End.	09/14/20	
Interim Final Rule Comment Period End.	10/26/20	
Interim Final Rule Effective.	10/26/20	
Final Rule .....	04/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* FAR Policy, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969–4075, *Email:* [farpolicy@gsa.gov](mailto:farpolicy@gsa.gov).

*RIN:* 9000–AN92

**486. Federal Acquisition Regulation (FAR); FAR Case 2020–007, Accelerated Payments Applicable to Contracts With Certain Small Business Concerns [9000–AO10]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to establish an accelerated payment date for small business contractors, to the fullest extent permitted by law, with a goal of 15 days after receipt of a proper invoice, if a specific payment date is not established by contract. For contractors that subcontract with small businesses, the rule, to the fullest extent permitted by law, establishes an accelerated payment date, with a goal of 15 days after receipt of a proper invoice, if: (1) A specific payment date is not established by contract, and (2) the contractor agrees to make accelerated payments to the subcontractor without any further consideration from, or fees charged to, the subcontractor. This change implements section 873 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92). Section 873 amends 31 U.S.C. 3903(a). For DoD, however, this rule implements section 815 of the William M. (Mac) Thornberry NDAA for FY 2021, which amended 10 U.S.C. 2307(a)(2)(A) (now found at 10 U.S.C. 3801) by striking the language if a specific payment date is not established by contract.” Accordingly, the final rule excludes from DoD contracts the condition reflected in the language a

specific payment date is not established by contract.”

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/29/21	86 FR 53923
NPRM Comment Period End.	11/29/21	
Final Rule .....	12/00/22	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Zenaida Delgado, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969–7207, *Email:* [zenaida.delgado@gsa.gov](mailto:zenaida.delgado@gsa.gov).

*RIN:* 9000–AO10

**487. Federal Acquisition Regulation (FAR); FAR Case 2020–011, Implementation of FASC Exclusion Orders [9000–AO13]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* This rule will amend the Federal Acquisition Regulation (FAR) to address implementation of issued exclusion orders authorized by section 202 of the SECURE Technology Act (115 Pub. L. 390), which amends 41 U.S.C. 1323 by creating the Federal Acquisition Security Council (FASC) and authorizing the Secretary of Homeland Security, the Secretary of Defense, and the Director of National Intelligence to issue exclusion orders, upon the recommendation of the FASC. These orders are issued to protect national security by excluding certain covered products, services, or sources from the Federal supply chain.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	12/00/22	
Interim Final Rule Comment Period End.	02/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Marissa Ryba, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 314 586–1280, *Email:* [marissa.ryba@gsa.gov](mailto:marissa.ryba@gsa.gov).

*RIN:* 9000–AO13

**488. Federal Acquisition Regulation (FAR); FAR Case 2021–014, Increasing the Minimum Wage for Contractors [9000–AO31]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA will finalize an interim rule which amended the Federal Acquisition Regulation

(FAR) to implement Executive Order 14026, Increasing the Minimum Wage for Federal Contractors, dated April 27, 2021, and Department of Labor regulations (29 CFR part 23). The Executive order seeks to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by increasing to \$15.00 the hourly minimum wage paid to those contractors.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	01/26/22	87 FR 4117
Interim Final Rule Comment Period End.	03/28/22	
Final Rule .....	07/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605–2868, *Email:* [mahruba.uddowla@gsa.gov](mailto:mahruba.uddowla@gsa.gov).

*RIN:* 9000–AO31

**489. Federal Acquisition Regulation (FAR); FAR Case 2022–003, Use of Project Labor Agreement for Federal Construction Projects [9000–AO40]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are amending the Federal Acquisition Regulation (FAR) to implement Executive Order 14063 on the use of project labor agreements in connection with large-scale construction projects to promote economy and efficiency in Federal procurement. The rule will require the use of project labor agreements for large-scale construction projects with a total estimated value of \$35 million or more. The rule will continue to provide discretionary use of a project labor agreement on construction projects that do not meet the definition of large-scale construction projects.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/19/22	87 FR 51044
NPRM Comment Period End.	10/18/22	
Final Rule .....	03/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Dana Bowman, Procurement Analyst, DoD/GSA/NASA (FAR), DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 803–3188, *Email:* [dana.bowman@gsa.gov](mailto:dana.bowman@gsa.gov).

RIN: 9000-AO40

**490. • Federal Acquisition Regulation (FAR); FAR Case 2022-011, Nondisplacement of Qualified Workers Under Service Contracts [9000-AO48]***Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA will amend the Federal Acquisition Regulation (FAR) to implement Executive Order 14055, Nondisplacement of Qualified Workers Under Service Contracts, dated November 18, 2021 and Department of Labor regulations (29 CFR part 9). The Executive Order establishes a general policy of the Federal Government that service contracts which succeed contracts for the same or similar services, and solicitations for such contracts, shall include a non-displacement clause. The non-displacement clause requires the contractor and its subcontractors to offer qualified employees employed under the predecessor contract a right of first refusal of employment under the successor contract.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule Interim Final Rule Comment Period End.	04/00/23 06/00/23	

*Regulatory Flexibility Analysis**Required:* Yes.

*Agency Contact:* Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605-2868, *Email:* mahruba.uddowla@gsa.gov.

RIN: 9000-AO48

**DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)**

## Long-Term Actions

**491. Federal Acquisition Regulation (FAR); FAR Case 2018-006; Definition of Subcontract [9000-AN66]***Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 820 of the National Defense Authorization Act (NDAA) for FY 2018. Section 820 amends 41 U.S.C. 1906(c)(1) to change the definition of "subcontract" for the procurement of commercial items to exclude agreements

entered into by a contractor for the supply of commodities that are intended for use in the performance of multiple contracts with the Federal Government and other parties and are not identifiable to any particular contract.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	12/00/23 02/00/24	

*Regulatory Flexibility Analysis**Required:* Yes.

*Agency Contact:* Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 208-4949, *Email:* michael.o.jackson@gsa.gov.

RIN: 9000-AN66

**492. Federal Acquisition Regulation (FAR); FAR Case 2018-013, Exemption of Commercial and COTS Item Contracts From Certain Laws and Regulations [9000-AN72]***Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch.137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 839 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019. Section 839 requires a review of each existing determination to not exempt contracts and subcontracts for commercial products, commercial services, and commercially available off-the-shelf (COTS) items from certain laws when these contracts would otherwise have been exempted under 41 U.S.C. 1906(d) or 1907(b), and a new determination whether to provide exemptions for those products, services, or items and revisions to the FAR, as necessary. This rule will also assess every FAR regulation that does not originate from a law or Executive Order, but establishes a clause to be used in contracts for commercial products or commercial services, and eliminate those regulations, unless a new determination is made not to do so. The rule will also assess each FAR regulation that requires a contractor to include a specific clause in subcontracts for COTS items, unless such inclusion is required by law or Executive Order. As a result this rule attempts to streamline the application of rules and requirements to commercial acquisitions.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	12/00/23	

Action	Date	FR Cite
NPRM Comment Period End.	02/00/24	

*Regulatory Flexibility Analysis**Required:* Yes.

*Agency Contact:* Carrie Moore, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 571 300-5917, *Email:* carrie.moore@gsa.gov.

RIN: 9000-AN72

**DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)**

## Completed Actions

**493. Federal Regulation Acquisition (FAR); FAR Case 2017-019, Policy on Joint Ventures [9000-AN59]***Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration (SBA), Small Business Mentor Protégé Programs, published on July 25, 2016 (81 FR 48557), regarding joint ventures and to clarify policy on 8(a) joint ventures. The regulatory changes provide industry with a new way to compete for small business or socioeconomic set-asides using a joint venture made up of a mentor and a protégé. The 8(a) joint venture clarification prevents confusion on an 8(a) joint venture's eligibility to compete for an 8(a) competitive procurement.

*Completed:*

Reason	Date	FR Cite
Final Rule ..... Final Rule Effective.	09/23/22 10/28/22	87 FR 58219

*Regulatory Flexibility Analysis**Required:* Yes.

*Agency Contact:* Malissa Jones, *Phone:* 571 882-4687, *Email:* malissa.jones@gsa.gov.

RIN: 9000-AN59

**494. Federal Acquisition Regulation (FAR); FAR Case 2018-020, Construction Contract Administration [9000-AN78]***Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to

implement section 855 of the NDAA for FY 2019 (Pub. L. 115–232). Section 855 requires, for solicitations for construction contracts anticipated to be awarded to a small business, notification to prospective offerors regarding agency policies or practices in complying with FAR requirements relating to the timely definitization of requests for equitable adjustment and agency past performance in definitizing such requests.

*Completed:*

Reason	Date	FR Cite
Final Rule .....	09/23/22	87 FR 08227
Final Rule Effective.	10/28/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dana L. Bowman, Phone: 202 803–3188, Email: dana.bowman@gsa.gov, RIN: 9000–AN78

**495. Federal Acquisition Regulation (FAR); FAR Case 2019–007, Update of Historically Underutilized Business Zone Program [9000–AN90]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are amending the Federal Acquisition Regulation (FAR) to implement regulatory changes issued in a final rule on November 26, 2019, by the Small Business Administration regarding the Historically Underutilized Business Zone (HUBZone) Program. The regulatory changes are intended to reduce the regulatory burden associated with the HUBZone Program. This rule promotes equity in Federal procurement.

*Completed:*

Reason	Date	FR Cite
Final Rule .....	09/23/22	87 FR 58232
Final Rule Effective.	10/28/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Malissa Jones, Phone: 571 882–4687, Email: malissa.jones@gsa.gov, RIN: 9000–AN90

**496. Federal Acquisition Regulation (FAR); FAR Case 2020–013, Certification of Women-Owned Small Businesses [9000–AO17]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* The purpose of this FAR case is to implement the statutory requirement for certification of women-owned and economically disadvantaged women-owned small businesses participating in the Women-Owned Small Business Program (section 825 of the National Defense Authorization Act for Fiscal Year 2015), as implemented by the Small Business Administration in its final rule published May 11, 2020. This rule promotes equity in Federal procurement.

*Completed:*

Reason	Date	FR Cite
Final Rule .....	09/23/22	87 FR 58237
Final Rule Effective.	10/28/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Malissa Jones, Phone: 571 882–4687, Email: malissa.jones@gsa.gov, RIN: 9000–AO17

**497. Federal Acquisition Regulation (FAR); FAR Case 2021–008, Amendments to the FAR Buy American Act Requirements [9000–AO22]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are amending the Federal Acquisition Regulation (FAR) to implement section 8 of Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers. Section 8 requires the Federal Acquisition Regulatory Council to strengthen the impact of the Buy American Act. In pursuit of the goals of section 8, the final rule would provide for (1) an increase to the domestic content threshold, a schedule for future increases, and a fallback threshold that would allow for products meeting a specific lower domestic content threshold to qualify as domestic products under certain circumstances; and (2) a framework for application of an enhanced price preference for a domestic product that is considered a critical item or made up of critical components.

*Completed:*

Reason	Date	FR Cite
Final Rule Correction.	10/18/22	87 FR 62999
Final Rule Effective.	10/25/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Mahruba Uddowla, Phone: 703 605–2868, Email: mahruba.uddowla@gsa.gov, RIN: 9000–AO22

**498. Federal Acquisition Regulations (FAR); FAR Case 2021–010, Subcontracting to Puerto Rican and Other Small Businesses [9000–AO27]**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 861 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232), as implemented by the Small Business Administration's final rule published October 16, 2020 (85 FR 66146). Section 861 of the NDAA for FY 2019 provides contracting incentives to mentors that subcontract to protegee firms that are Puerto Rican businesses. Specifically, a mentor that provides a subcontract to a protégé that has its principal office located in the Commonwealth of Puerto Rico may receive positive consideration for the mentor's past performance evaluation, and apply costs incurred for providing training to such protegee toward the subcontracting goals contained in the subcontracting plan of the mentor. This FAR case also implements SBA's final rule which added clarifying language to recognize that prime contractors may rely on the self-certifications of their subcontractors provided they do not have a reason to doubt any specific self-certification. Lastly, this FAR case implements changes to SBA's regulations at 13 CFR 125.3(b)(2) which clarify that an Alaska Native Corporation (ANC) owned firm that does not individually qualify as small but counts as a small business or a small disadvantaged business for subcontracting goaling purposes under 43 U.S.C. 1626(e)(4)(B) is not currently required to submit a subcontracting plan. This rule promotes equity in Federal procurement.

*Completed:*

Reason	Date	FR Cite
Withdrawn .....	10/27/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Malissa Jones, Phone: 571 882–4687, Email: malissa.jones@gsa.gov, RIN: 9000–AO27

[FR Doc. 2023–02036 Filed 2–21–23; 8:45 am]

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# FEDERAL REGISTER

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Part XX

Bureau of Consumer Financial Protection

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Semiannual Regulatory Agenda

**BUREAU OF CONSUMER FINANCIAL PROTECTION****12 CFR Ch. X****Semiannual Regulatory Agenda**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** The Consumer Financial Protection Bureau (Bureau) is publishing this agenda as part of the Fall 2022 Unified Agenda of Federal Regulatory and Deregulatory Actions. The Bureau reasonably anticipates having the regulatory matters identified below under consideration during the period from December 1, 2022, to November 30, 2023. The next agenda will be published in Spring 2023 and will update this agenda through Spring 2024. Publication of this agenda is in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

**DATES:** This information is current as of September 30, 2022.

**ADDRESSES:** Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552.

**FOR FURTHER INFORMATION CONTACT:** A staff contact is included for each regulatory item listed herein. If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

**SUPPLEMENTARY INFORMATION:** The Bureau is publishing its Fall 2022 Agenda as part of the 2022 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget (OMB) under Executive Order 12866. The agenda lists the regulatory matters that the Bureau reasonably anticipates having under consideration during the period from December 1, 2022, to November 30, 2023, as described further below.<sup>1</sup> The complete Unified Agenda is available to

the public at the following website: <https://www.reginfo.gov>.

Consistent with procedures established by OMB's Office of Information and Regulatory Affairs,<sup>2</sup> the Bureau's active agenda is divided into five sections: pre-rule stage; proposed rule stage; final rule stage; long-term actions, completed actions. Generally, the pre-rule through final rule stages sections list items the Bureau plans to issue within the next 12 months. Rulemakings in the pre-rule stage are listed with a date of November 2023, the end of the reporting period, as a placeholder only. The long-term actions are listed for informational purposes, if a regulatory action is anticipated beyond that one-year time frame. Completed actions are those that have been published as final or are withdrawn.

**Rohit Chopra,**  
*Director, Consumer Financial Protection Bureau.*

**CONSUMER FINANCIAL PROTECTION BUREAU—PRERULE STAGE**

Sequence No.	Title	Regulation Identifier No.
499 .....	Required Rulemaking on Personal Financial Data Rights .....	3170-AA78

**CONSUMER FINANCIAL PROTECTION BUREAU—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
500 .....	Amendments to FIRREA Concerning Automated Valuation Models .....	3170-AA57

**CONSUMER FINANCIAL PROTECTION BUREAU—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
501 .....	Small Business Lending Data Collection Under the Equal Credit Opportunity Act .....	3170-AA09

**CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)****Prerule Stage****499. Required Rulemaking on Personal Financial Data Rights [3170-AA78]**

*Legal Authority:* 12 U.S.C. 5533

*Abstract:* Section 1033 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provides that, subject to rules prescribed by the Bureau, a covered entity (for example, a bank) must make available to consumers, upon request, transaction data and other information concerning a consumer financial product or service that the consumer obtains from the

covered entity. Section 1033 also states that the Bureau must prescribe by rule standards to promote the development and use of standardized formats for information made available to consumers. In November 2020, the Bureau published an Advance Notice of Proposed Rulemaking (ANPRM) concerning implementation of section 1033, accepting comments until February 2021. In October 2022, the Bureau released materials in advance of convening a panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA), in conjunction with the Office of Management and Budget and the Small Business

Administration's Chief Counsel for Advocacy. The Bureau's next step in the rulemaking is to convene the SBREFA panel and issue a report summarizing feedback received from the panel.

*Timetable:*

Action	Date	FR Cite
Request for Information.	11/22/16	81 FR 83806
Principles Statement.	10/18/17	
ANPRM .....	11/06/20	85 FR 71003
ANPRM Comment Period End.	02/04/21	
SBREFA Outline	10/27/22	
SBREFA Report ..	02/00/23	

<sup>1</sup> The listing does not include certain routine, frequent, or administrative matters. The Bureau is

reporting information for this Unified Agenda in a manner consistent with past practice.

<sup>2</sup> See [https://www.reginfo.gov/public/jsp/eAgenda/UA\\_About.myjsp](https://www.reginfo.gov/public/jsp/eAgenda/UA_About.myjsp).

*Regulatory Flexibility Analysis**Required:* Yes.

*Agency Contact:* Michael Scherzer, Office of Regulations, Consumer Financial Protection Bureau, Washington, DC 20552, *Phone:* 202 435-7700.

*RIN:* 3170-AA78**CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)**

Proposed Rule Stage

**500. Amendments to Firrea Concerning Automated Valuation Models [3170-AA57]***Legal Authority:* 12 U.S.C. 3354

*Abstract:* The Bureau is participating in an interagency rulemaking process with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Federal Housing Finance Agency (collectively, the Agencies) to develop regulations to implement the amendments made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) concerning automated valuation models. The FIRREA amendments require implementing regulations for quality control standards for automated valuation models (AVMs). In February 2022, the Bureau initiated the process under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) for this rulemaking and released an outline of proposals and alternatives under consideration for the SBREFA panel, made up of representatives of small businesses that might be affected by the

rulemaking. The Bureau released a final SBREFA report on May 13, 2022. The Agencies will continue to work to develop a proposed rule to implement the Dodd-Frank Act's AVM amendments to FIRREA.

*Timetable:*

Action	Date	FR Cite
SBREFA Outline	02/23/22	
SBREFA Report ..	05/13/22	
NPRM .....	03/00/23	

*Regulatory Flexibility Analysis**Required:* Yes.

*Agency Contact:* Pedro De Oliveira, Office of Regulations, Consumer Financial Protection Bureau, Washington, DC 20552, *Phone:* 202 435-7700.

*RIN:* 3170-AA57**CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)**

Final Rule Stage

**501. Small Business Lending Data Collection Under the Equal Credit Opportunity Act [3170-AA09]***Legal Authority:* 15 U.S.C. 1691c-2

*Abstract:* Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Equal Credit Opportunity Act (ECOA) to require, subject to rules prescribed by the Bureau, financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses. In September 2020, the Bureau released an outline of proposals under consideration and alternatives considered in advance of convening a panel under the Small Business Regulatory Enforcement

Fairness Act (SBREFA), in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy. The SBREFA panel was convened in October 2020 and received feedback from representatives of small entities on the impacts the rules the Bureau is considering to implement section 1071 would have on small entities likely to be directly affected by the rulemaking. The panel's report was completed and released in December 2020. On October 8, 2021, a Notice of Proposed Rulemaking (NPRM) was published in the **Federal Register**. The Bureau's next action for the section 1071 rulemaking is the issuance of a final rule.

*Timetable:*

Action	Date	FR Cite
Request for Information.	05/15/17	82 FR 22318
Request for Information Comment Period End.	09/14/17	
SBREFA Outline Pre-Rule Activity—SBREFA Report.	09/15/20 12/14/20	
NPRM .....	10/08/21	86 FR 56356
NPRM Comment Period End.	01/06/22	
Final Rule .....	01/00/23	

*Regulatory Flexibility Analysis**Required:* Yes.

*Agency Contact:* Kristine Andreassen, Office of Regulations, Consumer Financial Protection Bureau, Washington, DC 20552, *Phone:* 202 435-7700.

*RIN:* 3170-AA09

[FR Doc. 2023-02037 Filed 2-21-23; 8:45 am]

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Part XXI

Consumer Product Safety Commission

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Semiannual Regulatory Agenda

**CONSUMER PRODUCT SAFETY COMMISSION****16 CFR Ch. II****Semiannual Regulatory Agenda**

**AGENCY:** U.S. Consumer Product Safety Commission.

**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** In this document, the Commission publishes its semiannual regulatory flexibility agenda. In addition, this document includes an agenda of regulations that the Commission expects to develop or review during the next year. This document meets the requirements of the Regulatory Flexibility Act and Executive Order 12866.

**DATES:** The Commission welcomes comments on the agenda and on the individual agenda entries. Submit comments to the Office of the Secretary on or before March 24, 2023.

**ADDRESSES:** Caption comments on the regulatory agenda, “Regulatory Flexibility Agenda.” You can submit comments by email to: *cpsc-os@cpsc.gov*. You can also submit comments by mail or delivery to the Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** For further information on the agenda, in general, contact Daniel R. Vice, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814–4408, *dvice@cpsc.gov*. For further information regarding a particular item on the agenda, contact the person listed in the column titled, “Contact,” for that particular item.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612) contains several provisions intended to reduce

unnecessary and disproportionate regulatory requirements on small businesses, small governmental organizations, and other small entities. Section 602 of the RFA requires each agency to publish, twice a year, a regulatory flexibility agenda containing “a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities.” 5 U.S.C. 602. The agency must provide a summary of the nature of the rule, the objectives and legal basis for the rule, and an approximate schedule for acting on each rule for which the agency has issued a notice of proposed rulemaking. In addition, the regulatory flexibility agenda must contain the name and telephone number of an agency official who is knowledgeable about the listed items. Agencies must attempt to provide notice of their agendas to small entities and solicit their comments either by directly notifying them, or by including the agenda in publications that small entities are likely to obtain.

In addition, Executive Order 12866, *Regulatory Planning and Review* (Sep. 30, 1993), requires each agency to publish, twice a year, a regulatory agenda of regulations under development or review during the next year. 58 FR 51735 (Oct. 4, 1993). The Executive order states that agencies may combine this agenda with the regulatory flexibility agenda required under the RFA. The agenda required by Executive Order 12866 must include all of the regulations the agency expects to develop or review during the next 12 months, regardless of whether they may have a significant economic impact on a substantial number of small entities. This agenda also includes regulatory activities that the Commission listed in the spring 2022 agenda and completed before publishing this agenda.

The agenda contains a brief description and summary of each

regulatory activity, including the objectives and legal basis for each; an approximate schedule of target dates, subject to revision, for developing or completing each activity; and the name and telephone number of an agency official who is knowledgeable about items in the agenda.

The internet is the primary means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at: *www.reginfo.gov*, in a format that allows users to obtain information from the agenda database.

Because agencies must publish in the **Federal Register** the regulatory flexibility agenda required by the RFA (5 U.S.C. 602), the Commission’s printed agenda entries include only:

(1) rules that are in the agency’s regulatory flexibility agenda, in accordance with the RFA, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) rules that the agency has identified for periodic review under section 610 of the RFA.

The entries in the Commission’s printed agenda are limited to fields that contain information that the RFA requires in an agenda. Additional information on these entries is available in the Unified Agenda published on the internet.

The agenda reflects the Commission’s assessment of the likelihood that the specified event will occur during the next year; the precise dates for each rulemaking are uncertain. New information, changes of circumstances, or changes in the law, may alter anticipated timing. In addition, you should not infer from this agenda a final determination by the Commission or its staff regarding the need for, or the substance of, any rule or regulation.

**Alberta E. Mills,**

*Secretary, Consumer Product Safety Commission.*

**CONSUMER PRODUCT SAFETY COMMISSION—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
502 .....	Portable Generators .....	3041–AC36

**CONSUMER PRODUCT SAFETY COMMISSION—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
503 .....	Regulatory Options for Table Saws ( <b>Reg Plan Seq No. 219</b> ) .....	3041–AC31
504 .....	Petition for Rulemaking to Eliminate Accessible Cords on Window Covering Products ( <b>Reg Plan Seq No. 220</b> ).	3041–AD31

## CONSUMER PRODUCT SAFETY COMMISSION—FINAL RULE STAGE—Continued

Sequence No.	Title	Regulation Identifier No.
505 .....	Furniture Tip Overs: Clothing Storage Units ( <b>Reg Plan Seq No. 221</b> ) .....	3041–AD65

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

## CONSUMER PRODUCT SAFETY COMMISSION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
506 .....	Recreational Off-Road Vehicles .....	3041–AC78

## CONSUMER PRODUCT SAFETY COMMISSION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
507 .....	Safety Standard for Magnets .....	3041–AD82

**CONSUMER PRODUCT SAFETY COMMISSION (CPSC)**

## Proposed Rule Stage

**502. Portable Generators [3041–AC36]**

*Legal Authority:* 15 U.S.C. 2051

*Abstract:* In 2006, the Commission issued an advance notice of proposed rulemaking (ANPRM) under the Consumer Product Safety Act (CPSA) concerning portable generators. The ANPRM discussed regulatory options that could reduce deaths and injuries related to portable generators, particularly those involving carbon monoxide (CO) poisoning. In fiscal year 2006, staff awarded a contract to develop a prototype generator engine with reduced CO in the exhaust. Also, in fiscal year 2006, staff entered into an interagency agreement (IAG) with the National Institute of Standards and Technology (NIST) to conduct tests with a generator, in both off-the-shelf and prototype configurations, operating in the garage attached to NIST's test house. In fiscal year 2009, staff entered into a second IAG with NIST with the goal of developing CO emission performance requirements for a possible proposed regulation that would be based on health effects criteria. After additional staff and contractor work, the Commission issued a notice of proposed rulemaking (NPRM) in 2016, proposing a performance standard that would limit the CO emission rates from operating portable generators. In 2018, two voluntary standards adopted different CO-mitigation requirements intended to address the CO poisoning hazard associated with portable generators. Staff developed a simulation and analysis plan to evaluate the effectiveness of those voluntary

standards' requirements. In 2019, the Commission sought public comments on staff's plan. In August 2020, staff submitted to the Commission a draft notice of availability of the modified plan, based on staff's review and consideration of the comments, for evaluating the voluntary standards; the Commission published the notice of availability in August 2020. In February 2022, staff delivered a briefing package to the Commission with the results of the effectiveness analysis and information on the availability of compliant generators in the marketplace. Staff concluded that the CO hazard-mitigation requirements of one standard are more effective than the other, but conformance to either standard is low. Staff intends to deliver an NPRM or supplemental NPRM rulemaking briefing package on portable generators to the Commission in fiscal year 2023.

*Timetable:*

Action	Date	FR Cite
Staff Sent ANPRM to Commission.	07/06/06	71 FR 74472
Staff Sent Supplemental Material to Commission.	10/12/06	
Commission Decision.	10/26/06	
Staff Sent Draft ANPRM to Commission.	11/21/06	
ANPRM .....	12/12/06	
ANPRM Comment Period End.	02/12/07	81 FR 83556
Staff Releases Research Report for Comment.	10/10/12	
NPRM .....	11/21/16	

Action	Date	FR Cite
NPRM Comment Period Extended.	12/13/16	81 FR 89888
Public Hearing for Oral Comments.	03/08/17	82 FR 8907
NPRM Comment Period End.	04/24/17	84 FR 32729
Staff Sends Notice of Availability to the Commission.	06/26/19	
Commission Decision.	07/02/19	
Notice of Availability.	07/09/19	
Staff Sends Notice of Availability to Commission.	08/12/20	
Commission Decision.	08/19/20	85 FR 52096
Notice of Availability.	08/24/20	
Staff Report on Effectiveness Evaluation of Voluntary Standards.	02/16/22	
Staff Sends (S)NPRM briefing package to Commission.	01/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Janet L. Buyer, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, Phone: 301 987–2293, Email: jbuyer@cpsc.gov.

*RIN:* 3041–AC36

**CONSUMER PRODUCT SAFETY COMMISSION (CPSC)**

Final Rule Stage

**503. Regulatory Options for Table Saws [3041-AC31]**

*Regulatory Plan:* This entry is Seq. No. 219 in part II of this issue of the **Federal Register**.

*RIN:* 3041-AC31

**504. Petition for Rulemaking To Eliminate Accessible Cords on Window Covering Products [3041-AD31]**

*Regulatory Plan:* This entry is Seq. No. 220 in part II of this issue of the **Federal Register**.

*RIN:* 3041-AD31

**505. Furniture Tip Overs: Clothing Storage Units [3041-AD65]**

*Regulatory Plan:* This entry is Seq. No. 221 in part II of this issue of the **Federal Register**.

*RIN:* 3041-AD65

**CONSUMER PRODUCT SAFETY COMMISSION (CPSC)**

Long-Term Actions

**506. Recreational Off-Road Vehicles [3041-AC78]**

*Legal Authority:* 15 U.S.C. 2056; 15 U.S.C. 2058

*Abstract:* The Commission is considering whether recreational off-road vehicles (ROVs) present an unreasonable risk of injury that should be regulated. Staff conducted testing and evaluation programs to develop performance requirements addressing vehicle stability, vehicle handling, and occupant protection. In 2014, the Commission issued a notice of proposed rulemaking (NPRM) proposing standards addressing vehicle stability, vehicle handling, and occupant protection. Congress directed in fiscal year 2016, and reaffirmed in subsequent fiscal year appropriations, that none of the amounts made available by the Appropriations Bill may be used to finalize or implement the proposed Safety Standard for Recreational Off-Highway Vehicles until after the National Academy of Sciences completes a study to determine specific information, as set forth in the Appropriations Bill. Staff ceased work on a Final Rule briefing package and instead engaged the Recreational Off-Highway Vehicle Association (ROHVA) and Outdoor Power Equipment Institute (OPEI) in the development of voluntary standards for ROVs. Staff conducted dynamic and static tests on ROVs, shared test results with ROHVA and

OPEI, and participated in the development of revised voluntary standards to address staff's concerns with vehicle stability, vehicle handling, and occupant protection. The voluntary standards for ROVs were revised and published in 2016 (ANSI/ROHVA 1-2016 and ANSI/OPEI B71.9-2016). Staff assessed the new voluntary standard requirements and prepared a termination of rulemaking briefing package that was submitted to the Commission on November 22, 2016. The Commission voted not to terminate the rulemaking associated with ROVs. In the Fiscal Year 2020 Operating Plan, the Commission directed staff to prepare a rulemaking termination briefing package. Staff submitted a briefing package to the Commission on September 16, 2020 that recommended termination of the rulemaking. On September 22, 2020, the Commission voted 2-2 on this matter. A majority was not reached and no action is being taken.

*Timetable:*

Action	Date	FR Cite
Staff Sends ANPRM Briefing Package to Commission.	10/07/09	
Commission Decision.	10/21/09	
ANPRM .....	10/28/09	74 FR 55495
ANPRM Comment Period Extended.	12/22/09	74 FR 67987
Extended Comment Period End.	03/15/10	
Staff Sends NPRM Briefing Package to Commission.	09/24/14	
Staff Sends Supplemental Information on ROVs to Commission.	10/17/14	
Commission Decision.	10/29/14	
NPRM Published in <b>Federal Register</b> .	11/19/14	79 FR 68964
NPRM Comment Period Extended.	01/23/15	80 FR 3535
Extended Comment Period End.	04/08/15	
Staff Sends Briefing Package Assessing Voluntary Standards to Commission.	11/22/16	
Commission Decision Not to Terminate.	01/25/17	

Action	Date	FR Cite
Staff Sends Briefing Package to Commission.	09/16/20	
Commission Decision: Majority Not Reached, No Action Will be Taken.	09/22/20	
Next Step Undetermined.	To Be Determined	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Caroleene Paul, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, Phone: 301 987-2225, Email: cpaul@cpsc.gov.

*RIN:* 3041-AC78

**CONSUMER PRODUCT SAFETY COMMISSION (CPSC)**

Completed Actions

**507. Safety Standard for Magnets [3041-AD82]**

*Legal Authority:* 15 U.S.C. 553; 15 U.S.C. 2056; 15 U.S.C. 2058

*Abstract:* Based on direction in the Commission's Fiscal Year 2021 Operating Plan, staff submitted a notice of proposed rulemaking (NPRM) briefing package to the Commission on October 6, 2021, to address the internal interaction hazard associated with ingestion of small, powerful magnets. On December 14, 2021, the Commission voted to approve publication of the NPRM. On January 10, 2022, the NPRM was published in the **Federal Register**, seeking comments and initiating rulemaking under the Consumer Product Safety Act (15 U.S.C. 2051-2089). The written comment period on the NPRM closed on March 28, 2022. On February 2, 2022, staff submitted to the Commission a draft notice announcing the opportunity for interested parties to make oral comments on the NPRM. On February 8, 2022, the Commission voted to approve publication of the oral comment notice. The oral comment notice was published in the **Federal Register** on February 15, 2022, indicating that requests to present at the oral hearing had to be provided by February 23, 2022. The Commission held the hearing on March 2, 2022. On August 17, 2022, staff submitted a final rule briefing package to the Commission. On September 7, 2022, the Commission approved the Final Rule for

Magnets. On September 21, 2022, the Final Rule for Magnets was published in the **Federal Register**.

*Timetable:*

Action	Date	FR Cite
Staff Sends NPRM Briefing Package to Commission.	10/06/21	
Commission Decision.	12/14/21	
NPRM .....	01/10/22	87 FR 1260
Staff Sends Oral Comment Notice to Commission.	02/02/22	

Action	Date	FR Cite
Commission Decision on Oral Comment Notice.	02/08/22	
Oral Comment Notice Published.	02/15/22	87 FR 8442
Oral Comment Hearing.	03/02/22	
End of NPRM Comment Period.	03/28/22	
Staff Sends Final Rule Briefing Package to Commission.	08/17/22	
Commission Decision.	09/07/22	

Action	Date	FR Cite
Final Rule Published.	09/21/22	87 FR 57756

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Stephen Harsanyi, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, *Phone:* 301 987-2209, *Email:* [sharsanyi@cpsc.gov](mailto:sharsanyi@cpsc.gov), *RIN:* 3041-AD82

[FR Doc. 2023-02038 Filed 2-21-23; 8:45 am]

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Part XXII

Federal Communications Commission

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Semiannual Regulatory Agenda

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Ch. I****Unified Agenda of Federal Regulatory and Deregulatory Actions—Fall 2022**

**AGENCY:** Federal Communications Commission.

**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** Twice a year, in spring and fall, the Commission publishes in the **Federal Register** a list in the Unified Agenda of those major items and other significant proceedings under development or review that pertain to the Regulatory Flexibility Act (U.S.C. 602). The Unified Agenda also provides the Code of Federal Regulations citations and legal authorities that govern these proceedings. The complete Unified Agenda will be published on the internet in a searchable format at [www.reginfo.gov](http://www.reginfo.gov).

**ADDRESSES:** Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Maura McGowan, Telecommunications Policy Specialist, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, (202) 418-0990.

**SUPPLEMENTARY INFORMATION:****Unified Agenda of Major and Other Significant Proceedings**

The Commission encourages public participation in its rulemaking process. To help keep the public informed of significant rulemaking proceedings, the Commission has prepared a list of important proceedings now in progress. The General Services Administration publishes the Unified Agenda in the **Federal Register** in the spring and fall of each year.

The following terms may be helpful in understanding the status of the proceedings included in this report:

**Docket Number**—assigned to a proceeding if the Commission has issued either a Notice of Proposed Rulemaking or a Notice of Inquiry concerning the matter under consideration. The Commission has used docket numbers since January 1, 1978. Docket numbers consist of the last two digits of the calendar year in which the docket was established plus a sequential number that begins at 1 with the first docket initiated during a calendar year (e.g., Docket No. 15–1 or Docket No. 17–1). The abbreviation for the responsible bureau usually precedes the docket number, as in “MB Docket No. 17–289,” which indicates that the responsible bureau is the Media Bureau. A docket number consisting of only five digits (e.g., Docket No. 29622) indicates that the docket was established before January 1, 1978.

**Notice of Inquiry (NOI)**—issued by the Commission when it is seeking information on a broad subject or trying to generate ideas on a given topic. A comment period is specified during which all interested parties may submit comments.

**Notice of Proposed Rulemaking (NPRM)**—issued by the Commission when it is proposing a specific change to Commission rules and regulations. Before any changes are actually made, interested parties may submit written comments on the proposed revisions.

**Further Notice of Proposed Rulemaking (FNPRM)**—issued by the Commission when additional comment in the proceeding is sought.

**Memorandum Opinion and Order (MO&O)**—issued by the Commission to deny a petition for rulemaking, conclude an inquiry, modify a decision, or address a petition for reconsideration of a decision.

**Rulemaking (RM) Number**—assigned to a proceeding after the appropriate bureau or office has reviewed a petition for rulemaking, but before the Commission has taken action on the petition.

**Report and Order (R&O)**—issued by the Commission to state a new or amended rule or state that the Commission rules and regulations will not be revised.

**Marlene H. Dortch,**  
Secretary, Federal Communications Commission.

**CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
508 .....	Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991 (CG Docket No. 02–278).	3060–AI14
509 .....	Rules and Regulations Implementing Section 225 of the Communications Act (Telecommunications Relay Service) (CG Docket No. 03–123).	3060–AI15
510 .....	Structure and Practices of the Video Relay Service (VRS) Program (CG Docket No. 10–51) .....	3060–AJ42
511 .....	Implementation of the Middle Class Tax Relief and Job Creation Act of 2012/Establishment of a Public Safety Answering Point Do-Not-Call Registry (CG Docket No. 12–129).	3060–AJ84
512 .....	Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CG Docket No. 10–213).	3060–AK00
513 .....	Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services; CG Docket No. 13–24.	3060–AK01
514 .....	Advanced Methods to Target and Eliminate Unlawful Robocalls (CG Docket No. 17–59) .....	3060–AK62
515 .....	Empowering Broadband Consumers Through Transparency (CG Docket No 02–278) .....	3060–AL33
516 .....	Targeting and Eliminating Unlawful Text Messages, CG Docket 21–403, Notice of Proposed Rulemaking	3060–AL49

**ECONOMICS—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
517 .....	Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans.	3060–AJ15
518 .....	Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions (GN Docket No. 12–268).	3060–AJ82
519 .....	Broadband Data Collection .....	3060–AL42



## OFFICE OF ENGINEERING AND TECHNOLOGY—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
520 .....	Use of the 5.850–5.925 GHz Band (ET Docket No. 19–138) .....	3060–AK96
521 .....	Unlicensed White Space Device Operations in the Television Bands (ET Docket No. 20–36) .....	3060–AL22
522 .....	Protecting Against National Security Threats to the Communications Supply Chain Through the Equipment Authorization and Competitive Bidding Programs; ET Docket No. 21–232, EA Docket No. 21–233. ....	3060–AL23
523 .....	Wireless Microphones in the TV Bands (ET Docket No. 21–115), 600 MHz Guard Band, 600 MHz Duplex Gap, and the 941.5–944 MHz, 944–952 MHz, 952.850–956.250 MHz, 956.45–959.85 MHz, 1435–1525 MHz. ....	3060–AL27
524 .....	FCC Seeks to Enable State-of-the-Art Radar Sensors in 60 GHz Band .....	3060–AL36
525 .....	FCC Proposes to Update Equipment Authorization Rules to Incorporate New and Revised Industry Standards. ....	3060–AL39
526 .....	Allocation of Spectrum for Non-Federal Space Launch Operations (ET Docket No. 13–115) .....	3060–AL44

## OFFICE OF ENGINEERING AND TECHNOLOGY—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
527 .....	FCC Looks to Open the Door to New Wireless Microphone Technologies (ET Docket No. 21–115 & RM–11821. ....	3060–AL45

## INTERNATIONAL BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
528 .....	Update to Parts 2 and 25 Concerning NonGeostationary, Fixed-Satellite Service Systems, and Related Matters: IB Docket No. 16–408. ....	3060–AK59
529 .....	Amendment of Parts 2 and 25 of the FCC Rules to Facilitate the Use of Earth Stations in Motion Communicating With Geostationary Orbit Space Stations in FSS Bands: IB Docket No. 17–95. ....	3060–AK84
530 .....	Further Streamlining Part 25 Rules Governing Satellite Services: IB Docket No. 18–314 .....	3060–AK87
531 .....	Facilitating the Communications of Earth Stations in Motion With Non-Geostationary Orbit Space Stations: IB Docket No. 18–315. ....	3060–AK89
532 .....	Space Innovation; Mitigation of Orbital Debris in the New Space Age: IB Docket Nos. 18–313, 22–271 .....	3060–AK90
533 .....	Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership (IB Docket No. 16–155). ....	3060–AL12
534 .....	Parts 2 and 25 to Enable GSO FSS in the 17.3–17.8 GHz Band, Modernize Rules for 17/24 GHz BSS Space Stations, and Establish Off-Axis Uplink Power Limits for Extended Ka-Band FSS (IB Doc. No. 20–330). ....	3060–AL28
535 .....	Revising Spectrum Sharing Rules for Non-Geostationary Orbit, Fixed-Satellite Service Systems: IB Docket No. 21–456. ....	3060–AL41

## MEDIA BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
536 .....	Revision of EEO Rules and Policies (MM Docket No. 98–204) .....	3060–AH95
537 .....	Establishment of Rules for Digital Low-Power Television, Television Translator, and Television Booster Stations (MB Docket No. 03–185). ....	3060–AI38
538 .....	Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard (GN Docket No. 16–142). ....	3060–AK56
539 .....	2018 Quadrennial Regulatory Review of the Commission’s Broadcast Ownership Rules (MB Docket 18–349). ....	3060–AK77
540 .....	Equal Employment Opportunity Enforcement (MB Docket 19–177) .....	3060–AK86
541 .....	Duplication of Programming on Commonly Owned Radio Stations (MB Docket No. 19–310) .....	3060–AL19
542 .....	Sponsorship Identification Requirements for Foreign Government-Provided Programming (MB Docket No. 20–299). ....	3060–AL20
543 .....	FM Broadcast Booster Stations (MB Docket 20–401) .....	3060–AL21
544 .....	Update to Publication for Television Broadcast Station DMA Determinations for Cable and Satellite Carriage (MB Docket No. 22–239). ....	3060–AL46

## OFFICE OF MANAGING DIRECTOR—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
545 .....	Assessment and Collection of Regulatory Fees .....	3060–AK64

## PUBLIC SAFETY AND HOMELAND SECURITY BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
546 .....	Wireless E911 Location Accuracy Requirements: PS Docket No. 07–114 .....	3060–AJ52
547 .....	Improving Outage Reporting for Submarine Cables and Enhancing Submarine Cable Outage Data; GN Docket No. 15–206.	3060–AK39
548 .....	Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications: PS Docket No. 15–80.	3060–AK40
549 .....	New Part 4 of the Commission's Rules Concerning Disruptions to Communications; ET Docket No. 04–35	3060–AK41
550 .....	Wireless Emergency Alerts (WEA): PS Docket No. 15–91 .....	3060–AK54
551 .....	911 Fee Diversion Rulemaking: PS Docket Nos. 20–291, 09–14 .....	3060–AL31
552 .....	Resilient Networks, Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; PS Docket No 21–346, PS Docket No. 15–80, ET Docket No. 04–35..	3060–AL43

## PUBLIC SAFETY AND HOMELAND SECURITY BUREAU—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
553 .....	Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks.	3060–AI78

## WIRELESS TELECOMMUNICATIONS BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
554 .....	Amendment of Parts 1, 2, 22, 24, 27, 90, and 95 of the Commission's Rules to Improve Wireless Coverage Through the Use of Signal Boosters (WT Docket No. 10–4).	3060–AJ87
555 .....	Promoting Technological Solutions to Combat Wireless Contraband Device Use in Correctional Facilities; GN Docket No. 13–111.	3060–AK06
556 .....	Promoting Investment in the 3550–3700 MHz Band; GN Docket No. 17–258 .....	3060–AK12
557 .....	Updating Part 1 Competitive Bidding Rules (WT Docket No. 14–170) .....	3060–AK28
558 .....	Use of Spectrum Bands Above 24 GHz for Mobile Services—Spectrum Frontiers: WT Docket 10–112 .....	3060–AK44
559 .....	Expanding Flexible Use of the 3.7 to 4.2 GHz Band: GN Docket No. 18–122 .....	3060–AK76
560 .....	Amendment of the Commission's Rules to Promote Aviation Safety: WT Docket No. 19–140 .....	3060–AK92
561 .....	Implementation of State and Local Governments' Obligation to Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012 (WT Docket No.19–250).	3060–AL29
562 .....	Expanding Flexible Use of the 12.2–12.7 GHz Band, et al., WT Docket No. 20–443, et al .....	3060–AL40

## WIRELINE COMPETITION BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
563 .....	Local Telephone Networks That LECs Must Make Available to Competitors .....	3060–AH44
564 .....	Jurisdictional Separations .....	3060–AJ06
565 .....	Rates for Inmate Calling Services; WC Docket No. 12–375 .....	3060–AK08
566 .....	Comprehensive Review of the Part 32 Uniform System of Accounts (WC Docket No. 14–130) .....	3060–AK20
567 .....	Restoring Internet Freedom (WC Docket No. 17–108); Protecting and Promoting the Open Internet (GN Docket No. 14–28).	3060–AK21
568 .....	Technology Transitions; GN Docket No 13–5, WC Docket No. 05–25; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; WC Docket No. 17–84.	3060–AK32
569 .....	Numbering Policies for Modern Communications, WC Docket No. 13–97 .....	3060–AK36
570 .....	Implementation of the Universal Service Portions of the 1996 Telecommunications Act .....	3060–AK57
571 .....	Toll Free Assignment Modernization and Toll Free Service Access Codes: WC Docket No. 17–192, CC Docket No. 95–155.	3060–AK91
572 .....	Establishing the Digital Opportunity Data Collection; WC Docket Nos. 19–195 and 11–10 .....	3060–AK93
573 .....	Call Authentication Trust Anchor .....	3060–AL00
574 .....	Implementation of the National Suicide Improvement Act of 2018 .....	3060–AL01
575 .....	Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services .....	3060–AL02
576 .....	Establishing a 5G Fund for Rural America; GN Docket No. 20–32 .....	3060–AL15
577 .....	Improving Competitive Broadband Access to Multiple Tenant Environments .....	3060–AL35

## WIRELINE COMPETITION BUREAU—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
578 .....	IP-Enabled Services; WC Docket No. 04–36 .....	3060–AI48

**FEDERAL COMMUNICATIONS COMMISSION (FCC)***Consumer and Governmental Affairs Bureau*

## Long-Term Actions

**508. Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991 (CG Docket No. 02–278) [3060–AI14]***Legal Authority:* 47 U.S.C. 227

*Abstract:* In this docket, the Commission considers rules and policies to implement the Telephone Consumer Protection Act of 1991 (TCPA). The TCPA places requirements on robocalls (calls using an automatic telephone dialing system, an autodialer, a prerecorded or, an artificial voice), telemarketing calls, and unsolicited fax advertisements.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/08/02	67 FR 62667
FNPRM .....	04/03/03	68 FR 16250
Order .....	07/25/03	68 FR 44144
Order Effective .....	08/25/03	
Order on Reconsideration.	08/25/03	68 FR 50978
Order .....	10/14/03	68 FR 59130
FNPRM .....	03/31/04	69 FR 16873
Order .....	10/08/04	69 FR 60311
Order .....	10/28/04	69 FR 62816
Order on Reconsideration.	04/13/05	70 FR 19330
Order .....	06/30/05	70 FR 37705
NPRM .....	12/19/05	70 FR 75102
Public Notice .....	04/26/06	71 FR 24634
Order .....	05/03/06	71 FR 25967
NPRM .....	12/14/07	72 FR 71099
Declaratory Ruling	02/01/08	73 FR 6041
R&O .....	07/14/08	73 FR 40183
Order on Reconsideration.	10/30/08	73 FR 64556
NPRM .....	03/22/10	75 FR 13471
R&O .....	06/11/12	77 FR 34233
Public Notice .....	06/30/10	75 FR 34244
Public Notice (Reconsideration Petitions Filed).	10/03/12	77 FR 60343
Announcement of Effective Date.	10/16/12	77 FR 63240
Opposition End Date.	10/18/12	
Rule Corrections	11/08/12	77 FR 66935
Declaratory Ruling (release date).	11/29/12	
Declaratory Ruling (release date).	05/09/13	
Declaratory Ruling and Order.	10/09/15	80 FR 61129
NPRM .....	05/20/16	81 FR 31889
Declaratory Ruling	07/05/16	
R&O .....	11/16/16	81 FR 80594
Public Notice .....	06/28/18	83 FR 26284
Public Notice .....	10/03/18	
Declaratory Ruling	12/06/19	
Declaratory Ruling	12/09/19	
Order .....	03/17/20	
Declaratory Ruling	03/20/20	
Declaratory Ruling	06/25/20	

Action	Date	FR Cite
Declaratory Ruling and Order.	06/25/20	
Order on Reconsideration.	08/28/20	
Declaratory Ruling	09/04/20	
Declaratory Ruling	09/21/20	
NPRM .....	10/09/20	85 FR 64091
Public Notice .....	12/17/20	
Declaratory Ruling	12/18/20	
Declaratory Ruling	01/15/21	
Order on Recon ..	02/12/21	86 FR 9299
R&O .....	02/25/21	86 FR 11443
Public Notice (Reconsideration Petitions Filed).	04/12/21	86 FR 18934
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Kristi Thornton, Deputy Division Chief, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, Phone: 202 418–2467, Email: [kristi.thornton@fcc.gov](mailto:kristi.thornton@fcc.gov).

*RIN:* 3060–AI14**509. Rules and Regulations Implementing Section 225 of the Communications Act (Telecommunications Relay Service) (CG Docket No. 03–123) [3060–AI15]***Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 225

*Abstract:* This proceeding continues the Commission's inquiry into improving the quality of telecommunications relay service (TRS) and furthering the goal of functional equivalency, consistent with Congress' mandate that TRS regulations encourage the use of existing technology and not discourage or impair the development of new technology. In this docket, the Commission explores ways to improve emergency preparedness for TRS facilities and services, new TRS technologies, public access to information and outreach, and issues related to payments from the Interstate TRS Fund.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/25/03	68 FR 50993
R&O, Order on Reconsideration.	09/01/04	69 FR 53346
FNPRM .....	09/01/04	69 FR 53382
Public Notice .....	02/17/05	70 FR 8034
Declaratory Ruling/Interpretation.	02/25/05	70 FR 9239
Public Notice .....	03/07/05	70 FR 10930
Order .....	03/23/05	70 FR 14568
Public Notice/Announcement of Date.	04/06/05	70 FR 17334
Order .....	07/01/05	70 FR 38134

Action	Date	FR Cite
Order on Reconsideration.	08/31/05	70 FR 51643
R&O .....	08/31/05	70 FR 51649
Order .....	09/14/05	70 FR 54294
Order .....	09/14/05	70 FR 54298
Public Notice .....	10/12/05	70 FR 59346
R&O/Order on Reconsideration.	12/23/05	70 FR 76208
Order .....	12/28/05	70 FR 76712
Order .....	12/29/05	70 FR 77052
NPRM .....	02/01/06	71 FR 5221
Declaratory Ruling/Clarification.	05/31/06	71 FR 30818
FNPRM .....	05/31/06	71 FR 30848
FNPRM .....	06/01/06	71 FR 31131
Declaratory Ruling/Dismissal of Petition.	06/21/06	71 FR 35553
Clarification .....	06/28/06	71 FR 36690
Declaratory Ruling on Reconsideration.	07/06/06	71 FR 38268
Order on Reconsideration.	08/16/06	71 FR 47141
MO&O .....	08/16/06	71 FR 47145
Clarification .....	08/23/06	71 FR 49380
FNPRM .....	09/13/06	71 FR 54009
Final Rule; Clarification.	02/14/07	72 FR 6960
Order .....	03/14/07	72 FR 11789
R&O .....	08/06/07	72 FR 43546
Public Notice .....	08/16/07	72 FR 46060
Order .....	11/01/07	72 FR 61813
Public Notice .....	01/04/08	73 FR 863
R&O/Declaratory Ruling.	01/17/08	73 FR 3197
Order .....	02/19/08	73 FR 9031
Order .....	04/21/08	73 FR 21347
R&O .....	04/21/08	73 FR 21252
Order .....	04/23/08	73 FR 21843
Public Notice .....	04/30/08	73 FR 23361
Order .....	05/15/08	73 FR 28057
Declaratory Ruling	07/08/08	73 FR 38928
FNPRM .....	07/18/08	73 FR 41307
R&O .....	07/18/08	73 FR 41286
Public Notice .....	08/01/08	73 FR 45006
Public Notice .....	08/05/08	73 FR 45354
Public Notice .....	10/10/08	73 FR 60172
Order .....	10/23/08	73 FR 63078
2nd R&O and Order on Reconsideration.	12/30/08	73 FR 79683
Order .....	05/06/09	74 FR 20892
Public Notice .....	05/07/09	74 FR 21364
NPRM .....	05/21/09	74 FR 23815
Public Notice .....	05/21/09	74 FR 23859
Public Notice .....	06/12/09	74 FR 28046
Order .....	07/29/09	74 FR 37624
Public Notice .....	08/07/09	74 FR 39699
Order .....	09/18/09	74 FR 47894
Order .....	10/26/09	74 FR 54913
Public Notice .....	05/12/10	75 FR 26701
Order Denying Stay Motion (Release Date).	07/09/10	
Order .....	08/13/10	75 FR 49491
Order .....	09/03/10	75 FR 54040
NPRM .....	11/02/10	75 FR 67333
NPRM .....	05/02/11	76 FR 24442
Order .....	07/25/11	76 FR 44326
Final Rule (Order)	09/27/11	76 FR 59551
Final Rule; Announcement of Effective Date.	11/22/11	76 FR 72124

Action	Date	FR Cite	Action	Date	FR Cite	Action	Date	FR Cite
Proposed Rule (Public Notice).	02/28/12	77 FR 11997	R&O .....	03/21/16	81 FR 14984	Final Rule; announcement of effective and compliance dates.	10/23/20	85 FR 67447
Proposed Rule (FNPRM).	02/01/12	77 FR 4948	FNPRM .....	08/24/16	81 FR 57851	FNPRM .....	02/01/21	86 FR 7681
First R&O .....	07/25/12	77 FR 43538	FNPRM Comment Period End.	09/14/16		FNPRM Comment Period End.	04/02/21	
Public Notice .....	10/29/12	77 FR 65526	NOI and FNPRM	04/12/17	82 FR 17613	Public Notice; Petition for Reconsideration.	02/22/21	86 FR 10458
Order on Reconsideration.	12/26/12	77 FR 75894	NOI and FNPRM Comment Period End.	05/30/17		Oppositions Due Date.	03/19/21	
Order .....	02/05/13	78 FR 8030	R&O .....	04/13/17	82 FR 17754	R&O .....	02/23/21	86 FR 10844
Order (Interim Rule).	02/05/13	78 FR 8032	R&O .....	04/27/17	82 FR 19322	NPRM .....	03/19/21	86 FR 14859
NPRM .....	02/05/13	78 FR 8090	FNPRM .....	04/27/17	82 FR 19347	NPRM Comment Period End.	05/03/21	
Announcement of Effective Date.	03/07/13	78 FR 14701	FNPRM Comment Period End.	07/11/17		NPRM .....	06/04/21	86 FR 29969
NPRM Comment Period End.	03/13/13		R&O .....	06/23/17	82 FR 28566	NPRM Correction	06/15/21	86 FR 31668
FNPRM .....	07/05/13	78 FR 40407	Public Notice .....	07/21/17	82 FR 33856	Order on Recon ..	07/07/21	86 FR 35632
FNPRM Comment Period End.	09/18/13		Public Notice—Correction.	07/25/17	82 FR 34471	Public Notice .....	07/15/21	86 FR 37328
R&O .....	07/05/13	78 FR 40582	Public Notice Comment Period End.	07/31/17		NPRM Correction Comment Period End.	08/09/21	
R&O .....	08/15/13	78 FR 49693	Public Notice—Correction	08/17/17		Public Notice Comment Period End.		
FNPRM .....	08/15/13	78 FR 49717	Comment Period End.			Order on Recon; Correction.	10/05/21	86 FR 54871
FNPRM Comment Period End.	09/30/13		Public Notice—Correction Comment Period End.			NPRM .....	10/05/21	86 FR 64440
R&O .....	08/30/13	78 FR 53684	R&O .....	08/22/17	82 FR 39673	NPRM Comment Period End.	01/18/22	
FNPRM .....	09/03/13	78 FR 54201	Announcement of Effective Date.	10/17/17	82 FR 48203	Report & Order ...	07/18/22	87 FR 42656
NPRM .....	10/23/13	78FR 63152	Public Notice; Petition for Reconsideration.	10/25/17	82 FR 49303	Report & Order ...	09/21/22	87 FR 57645
FNPRM Comment Period End.	11/18/13		Oppositions Due Date.	11/20/17		Next Action Undetermined.		
Petition for Reconsideration; Request for Comment.	12/16/13	78 FR 76096	R&O and Declaratory Ruling.	06/27/18	83 FR 30082			
Petition for Reconsideration; Request for Comment.	12/16/13	78 FR 76097	FNPRM .....	07/18/18	83 FR 33899			
Request for Clarification; Request for Comment; Correction.	12/30/13	78 FR 79362	FNPRM Comment Period End.	11/15/18				
Petition for Reconsideration Comment Period End.	01/10/14		Public Notice .....	08/23/18	83 FR 42630			
NPRM Comment Period End.	01/21/14		Public Notice Opposition Period End.	09/17/18				
Announcement of Effective Date.	07/11/14	79 FR 40003	Announcement of Effective Date.	02/04/19	84 FR 1409			
Announcement of Effective Date.	08/28/14	79 FR 51446	R&O .....	03/08/19	84 FR 8457			
Correction—Announcement of Effective Date.	08/28/14	79 FR 51450	FNPRM .....	03/14/19	84 FR 9276			
Technical Amendments.	09/09/14	79 FR 53303	FNPRM Comment Period End.	04/29/19				
Public Notice .....	09/15/14	79 FR 54979	R&O .....	06/06/19	84 FR 26364			
R&O and Order ...	10/21/14	79 FR 62875	FNPRM .....	06/06/19	84 FR 26379			
FNPRM .....	10/21/14	79 FR 62935	Petition for Recon Request for Comment.	06/18/19	84 FR 28264			
FNPRM Comment Period End.	12/22/14		Petition for Recon Comment Period End.	07/15/19				
Final Action (Announcement of Effective Date).	10/30/14	79 FR 64515	FNPRM Comment Period End.	08/05/19				
Final Rule Effective.	10/30/14		R&O .....	01/06/20	85 FR 462			
FNPRM .....	11/08/15	80 FR 72029	R&O .....	01/09/20	85 FR 1125			
FNPRM Comment Period End.	01/01/16		NPRM .....	01/09/20	85 FR 1134			
Public Notice .....	01/20/16	81 FR 3085	NPRM Comment Period End.	02/13/20				
Public Notice Comment Period End.	02/16/16		Announcement of Effective Date.	02/19/20	85 FR 9392			
			Final Rule; removal of compliance notices.	05/06/20	85 FR 26857			
			Report & Order ...	05/08/20	85 FR 27309			
			Final Rule; correction.	08/26/20	85 FR 52489			
			R&O and Order on Recon.	10/14/20	85 FR 64971			

### Regulatory Flexibility Analysis

Required: Yes.

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### 510. Structure and Practices of the Video Relay Service (VRS) Program (CG Docket No. 10–51) [3060–AJ42]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 225; 47 U.S.C. 303(r)

**Abstract:** The Commission takes a fresh look at its VRS rules to ensure that it is available to and used by the full spectrum of eligible users, encourages innovation, and is provided efficiently to be less susceptible to the waste, fraud, and abuse that have plagued the program and threatened its long-term viability. The Commission also considers the most effective and efficient way to make VRS available and to determine what is the most fair, efficient, and transparent cost-recovery methodology. In addition, the Commission looks at various ways to measure the quality of VRS so as to ensure a better consumer experience.

<i>Timetable:</i>			Action	Date	FR Cite
			FNPRM Comment Period End.	09/14/16	
Declaratory Ruling	05/07/10	75 FR 25255	NOI and FNPRM	04/12/17	82 FR 17613
Declaratory Ruling	07/13/10	75 FR 39945	NOI and FNPRM	05/30/17	
Order .....	07/13/10	75 FR 39859	Comment Period End.		
Notice of Inquiry	07/19/10	75 FR 41863	R&O .....	04/13/17	82 FR 17754
NPRM .....	08/23/10	75 FR 51735	R&O .....	04/27/17	82 FR 19322
Interim Final Rule	02/15/11	76 FR 8659	FNPRM .....	04/27/17	82 FR 19347
Public Notice .....	03/02/11	76 FR 11462	FNPRM Comment Period End.	07/01/17	
R&O .....	05/02/11	76 FR 24393	Order .....	06/23/17	82 FR 28566
FNPRM .....	05/02/11	76 FR 24437	Public Notice .....	07/21/17	82 FR 33856
NPRM .....	05/02/11	76 FR 24442	Public Notice	07/31/17	
R&O (Correction)	05/27/11	76 FR 30841	Comment Period End.		
Order .....	07/25/11	76 FR 44326	Public Notice Correction.	07/25/17	82 FR 34471
2nd R&O .....	08/05/11	76 FR 47469	Public Notice Correction Comment Period End.	08/17/17	
Order (Interim Final Rule).	08/05/11	76 FR 47476	R&O and Order ...	08/22/17	82 FR 39673
Final Rule; Announcement of Effective Date.	09/26/11	76 FR 59269	Announcement of Effective Date.	10/17/17	82 FR 48203
Final Rule; Petition for Reconsideration; Public Notice.	09/27/11	76 FR 59557	Public Notice; Petition for Reconsideration.	10/25/17	82 FR 49303
Oppositions Due Date.	10/07/11		Oppositions Due Date.	11/20/17	
Final Rule; Clarification (MO&O).	10/31/11	76 FR 67070	R&O .....	06/06/19	84 FR 26364
FNPRM .....	10/31/11	76 FR 67118	FNPRM .....	06/06/19	84 FR 26379
Interim Final Rule; Announcement of Effective Date.	11/03/11	76 FR 68116	FNPRM Comment Period End.	08/05/19	
Final Rule; Announcement of Effective Date.	11/04/11	76 FR 68328	Report & Order ...	05/08/20	85 FR 27309
Final Rule; Announcement of Effective Date.	11/07/11	76 FR 68642	R&O and Order on Recon.	10/14/20	85 FR 64971
FNPRM Comment Period End.	12/30/11		Final rule; announcement of effective and compliance dates.	10/23/20	85 FR 67447
FNPRM .....	02/01/12	77 FR 4948	FNPRM .....	02/01/21	86 FR 7681
FNPRM Comment Period End.	03/19/12		FNPRM Comment Period End.	04/02/21	
Final Rule; Correction.	03/27/12	77 FR 18106	Public Notice; Petition for Reconsideration.	02/22/21	86 FR 10458
Correcting Amendments.	06/07/12	77 FR 33662	Oppositions Due Date.	03/19/21	
Order (Release Date).	07/25/12		NPRM .....	03/19/21	86 FR 14859
Correcting Amendments.	10/04/12	77 FR 60630	NPRM Comment Period End.	05/03/21	
Public Notice .....	10/29/12	77 FR 65526	NPRM .....	06/04/21	86 FR 29969
Comment Period End.	11/29/12		NPRM Correction	06/15/21	86 FR 31668
FNPRM .....	07/05/13	78 FR 40407	NPRM Correction Comment Period End.	07/30/21	
R&O .....	07/05/13	78 FR 40582	Order on Recon	07/07/21	86 FR 35632
FNPRM Comment Period End.	09/18/13		Order on Recon; Correction.	10/05/21	86 FR 54871
Public Notice .....	09/11/13	78 FR 55696	Report & Order ...	09/21/22	87 FR 57645
Public Notice .....	09/15/14	79 FR 54979	Next Action Undetermined.		
Comment Period End.	10/10/14				
Final Action (Announcement of Effective Date).	10/30/14	79 FR 64515			
Final Rule Effective.	10/30/14				
FNPRM .....	11/18/15	80 FR 72029			
FNPRM Comment Period End.	02/01/16				
R&O .....	03/21/16	81 FR 14984			
FNPRM .....	08/24/16	81 FR 57851			

*Regulatory Flexibility Analysis**Required: Yes.*

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RIN: 3060-AJ42

# 511. Implementation of the Middle Class Tax Relief and Job Creation Act of 2012/Establishment of a Public Safety Answering Point Do-Not-Call Registry (CG Docket No. 12-129) [3060-AJ84]

*Legal Authority:* Pub. L. 112-96, sec. 6507

*Abstract:* The Middle Class Tax Relief and Job Creation Act of 2012 required the Commission to create a Do-Not-Call Registry for public safety answering point (PSAP) telephone numbers and to prohibit the use of automated dialing equipment to place calls to PSAP numbers on the Registry. In this docket, the Commission adopted rules and policies implementing these statutory requirements.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/21/12	77 FR 37362
R&O .....	10/29/12	77 FR 71131
Correction	02/13/13	78 FR 10099
Amendments.		
Announcement of Effective Date.	03/26/13	78 FR 18246
FNPRM .....	11/01/21	86 FR 60189
FNPRM Comment Period End.	12/01/21	
Next Action Undetermined.		

*Regulatory Flexibility Analysis**Required: Yes.*

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RIN: 3060-AJ84

# 512. Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CG Docket No. 10-213) [3060-AK00]

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 255; 47 U.S.C. 617 to 619

*Abstract:* These proceedings implement sections 716, 717, and 718 of the Communications Act, which were added by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA), related to the accessibility of advanced communications services and equipment (section 716), recordkeeping and enforcement requirements for entities subject to sections 255, 716, and 718 (section 717), and accessibility of internet browsers built into mobile phones (section 718).

Timetable:			Action	Date	FR Cite	Action	Date	FR Cite
Action	Date	FR Cite	Announcement of Effective Date.	03/07/13	78 FR 14701	Next Action Under-terminated.		
NPRM .....	03/14/11	76 FR 13800	NPRM Comment Period End.	03/12/13		<i>Regulatory Flexibility Analysis Required: Yes.</i>		
NPRM Comment Period Extended.	04/12/11	76 FR 20297	R&O .....	08/30/13	78 FR 53684	<i>Agency Contact:</i> Eliot Greenwald, Deputy Chief, Disability Rights Office, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, <i>Phone:</i> 202 418-2235, <i>Email:</i> eliot.greenwald@fcc.gov.		
NPRM Comment Period End.	05/13/11		FNPRM .....	09/03/13	78 FR 54201	<i>RIN:</i> 3060-AK01		
FNPRM .....	12/30/11	76 FR 82240	FNPRM Comment Period End.	11/18/13		<b>514. Advanced Methods To Target and Eliminate Unlawful Robocalls (CG Docket No. 17-59) [3060-AK62]</b>		
R&O .....	12/30/11	76 FR 82354	Petition for Reconsideration Request for Comment.	12/16/13	78 FR 76097	<i>Legal Authority:</i> 47 U.S.C. 201 and 202; 47 U.S.C. 227; 47 U.S.C. 251(e)		
FNPRM Comment Period End.	03/14/12		Petition for Reconsideration Comment Period End.	01/10/14		<i>Abstract:</i> The Telephone Consumer Protection Act of 1991 restricts the use of robocalls autodialed or prerecorded calls in certain instances. In CG Docket No. 17-59, the Commission considers rules and policies aimed at eliminating unlawful robocalling. Among the issues it examines in this docket are whether to allow carriers to block calls that purport to be from unallocated or unassigned phone numbers through the use of spoofing, whether to allow carriers to block calls based on their own analyses of which calls are likely to be unlawful and whether to establish a database of reassigned phone numbers to help prevent robocalls to consumers, who did not consent to such calls.		
Announcement of Effective Date.	04/25/12	77 FR 24632	Announcement of Effective Date.	07/11/14	79 FR 40003	<i>Timetable:</i>		
2nd R&O .....	05/22/13	78 FR 30226	Correction—Announcement of Effective Date.	08/28/14	79 FR 51446	Action	Date	FR Cite
R&O on Remand, Declaratory Ruling, and Order.	04/13/15	80 FR 19738	Technical Amendments.	08/28/14	79 FR 51450	NPRM/NOI .....	05/17/17	82 FR 22625
Next Action Under-terminated.			R&O and Declaratory Ruling.	09/09/14	79 FR 53303	2nd NOI .....	07/13/17	
<i>Regulatory Flexibility Analysis Required: Yes.</i>			FNPRM .....	06/27/18	83 FR 30082	NPRM Comment Period End.	07/31/17	
<i>Agency Contact:</i> Darryl Cooper, Attorney, Disability Rights Office, CGB, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, <i>Phone:</i> 202 418-7131, <i>Email:</i> darryl.cooper@fcc.gov.			Public Notice .....	07/18/18	83 FR 33899	FNPRM .....	01/08/18	83 FR 770
<i>RIN:</i> 3060-AK00			Public Notice Opposition Period End.	08/23/18	83 FR 42630	R&O .....	01/12/18	83 FR 1566
<b>513. Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services; CG Docket No. 13-24 [3060-AK01]</b>			FNPRM Comment Period End.	09/17/18		2nd FNPRM .....	04/23/18	83 FR 17631
<i>Legal Authority:</i> 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 225			Announcement of Effective Date.	11/15/18		Comment Period End.	06/07/18	
<i>Abstract:</i> The Federal Communications Commission (FCC) initiated this proceeding in its effort to ensure that internet-Protocol Captioned Telephone Service (IP CTS) is provided effectively and in the most efficient manner. In doing so, the FCC adopted rules to address certain practices related to the provision and marketing of IP CTS, as well as compensation of TRS providers. IP CTS is a form of relay service designed to allow people with hearing loss to speak directly to another party on a telephone call and to simultaneously listen to the other party and read captions of what that party is saying over an IP-enabled device. To ensure that IP CTS is provided efficiently to persons who need to use this service, the Commission adopted rules establishing several requirements and issued an FNPRM to address additional issues.			Petition for Recon Request for Comment.	02/04/19	84 FR 1409	2nd FNPRM .....	07/09/18	
<i>Timetable:</i>			Petition for Recon Comment Period End.	03/08/19	84 FR 8457	Reply Comment Period End.		
Action	Date	FR Cite	R&O .....	03/14/19	84 FR 9276	2nd R&O .....	03/26/19	84 FR 11226
NPRM .....	02/05/13	78 FR 8090	FNPRM .....	04/29/19		3rd FNPRM .....	06/24/19	84 FR 29478
Order (Interim Rule).	02/05/13	78 FR 8032	FNPRM Comment Period End.	06/18/19	84 FR 28264	Declaratory Ruling	06/24/19	84 FR 29387
Order .....	02/05/13	78 FR 8030	Announcement of Effective Date.	07/15/19		Public Notice	12/30/19	
			Final Rule; Removal of Compliance Notes.	01/06/20	85 FR 462	Seeking Input on Report.		
			Final Rule; correction.	02/19/20	85 FR 9392	Public Notice	01/24/20	
			R&O and Order on Recon.	05/06/20	85 FR 26857	Seeking Comment on Reassigned Numbers.		
			FNPRM .....	08/26/20	85 FR 52489	Public Notice Seeking Comment on RND Cost/Fee Structure.	02/26/20	
			Public Notice; Petition for Reconsideration.	10/14/20	85 FR 64971			
			NPRM .....	02/01/21	86 FR 7681			
			Oppositions Due Date.	02/22/21	86 FR 10458			
			FNPRM Comment Period End.	03/19/21	86 FR 14859			
			NPRM Comment Period End.	03/19/21				
			Public Notice .....	04/02/21				
			Public Notice .....	05/03/21				
			Report & Order ...	07/15/21	86 FR 37328			
				08/09/21				
				09/21/22	87 FR 57645			

Action	Date	FR Cite
Public Notice Establishing Guidelines for RND.	04/16/20	
Report .....	06/25/20	
3rd NPRM Comment Date.	06/26/20	
Announcement of Compliance Dates.	06/26/20	85 FR 38334
3rd R&O, Order of Reconsideration, 4th FNPRM.	07/31/20	85 FR 46063
4th R&O (release date).	12/30/20	
Public Notice .....	02/08/21	86 FR 8558
Public Notice .....	04/13/21	
Public Notice .....	06/15/21	
Public Notice .....	10/01/21	86 FR 61077
5th FNPRM .....	10/26/21	86 FR 59084
Public Notice .....	12/29/21	
Order on Reconsideration, 6th FNPRM, Waiver Order.	12/30/21	86 FR 74399
Public Notice .....	02/08/22	87 FR 7044
Seventh Further Notice of Proposed Rulemaking.	05/19/22	87 FR 42670
Sixth Report and Order.	05/19/22	87 FR 42916
Public Notice .....	08/24/22	87 FR 51920
Next Action Undetermined.		

*Regulatory Flexibility Analysis*  
Required: Yes.

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Jerusha Burnett, Attorney Advisor, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-0526, *Email:* jerusha.burnett@fcc.gov.

*RIN:* 3060-AK62

**515. Empowering Broadband Consumers Through Transparency (CG Docket No. 02-278) [3060-AL33]**

*Legal Authority:* Infrastructure Investment and Jobs Act, Public Law 117-58, 135 Stat. 429, 60504(a) (2021)

*Abstract:* In this docket, the Commission proposes that broadband internet access service providers (ISPs) display, at the point of sale, labels to disclose to consumers certain information about prices, introductory rates or promotions, data allowances, broadband speeds, and management practices, among other things.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/07/22	87 FR 6827
NPRM Comment Period End.	03/09/22	
Reply NPRM Comment Period End.	03/24/22	
Next Action Undetermined.		
<i>Regulatory Flexibility Analysis</i> Required: Yes. <i>Agency Contact:</i> Erica McMahon, Attorney Advisor, Federal Communications Commission, Consumer and Governmental Affairs Bureau, 445 12th Street SW, Washington, DC 20554, <i>Phone:</i> 202 418-0346, <i>Email:</i> erica.mcmahon@fcc.gov. <i>RIN:</i> 3060-AL33		
<b>516. • Targeting and Eliminating Unlawful Text Messages, CG Docket 21-403, Notice of Proposed Rulemaking [3060-AL49]</b>		
<i>Legal Authority:</i> 47 U.S.C. 154(i), 227(e), 251(e), 303		
<i>Abstract:</i> In this docket, the Commission considers rules and policies concerning the ability for mobile wireless service providers to block illegal text messages.		
<i>Timetable:</i>		
Action	Date	FR Cite
NPRM .....	To Be Determined	

*Regulatory Flexibility Analysis*  
Required: Yes.

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*RIN:* 3060-AL49

**FEDERAL COMMUNICATIONS COMMISSION (FCC)**

*Economics*

Long-Term Actions

**517. Development of Nationwide Broadband Data To Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans [3060-AJ15]**

*Legal Authority:* 15 U.S.C. 251; 47 U.S.C. 252; 47 U.S.C. 257; 47 U.S.C. 271; 47 U.S.C. 1302; 47 U.S.C. 160(b); 47 U.S.C. 161(a)(2)

*Abstract:* The Report and Order streamlined and reformed the Commission's Form 477 Data Program, which is the Commission's primary tool to collect data on broadband and telephone services.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/16/07	72 FR 27519
Order .....	07/02/08	73 FR 37861
Order .....	10/15/08	73 FR 60997
NPRM .....	02/08/11	76 FR 10827
Order .....	06/27/13	78 FR 49126
NPRM .....	08/24/17	82 FR 40118
NPRM Comment Period End.	09/25/17	
NPRM Reply Comment Period End.	10/10/17	
R&O and FNPRM Next Action Undetermined.	08/22/19	84 FR 43764

*Regulatory Flexibility Analysis*  
Required: Yes.

*Agency Contact:* Suzanne Mendez, Program Analyst, OEA, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-0941, *Email:* suzanne.mendez@fcc.gov.  
*RIN:* 3060-AJ15

**518. Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions (GN Docket No. 12-268) [3060-AJ82]**

*Legal Authority:* 47 U.S.C. 309(j)(8)(G); 47 U.S.C. 1452

*Abstract:* In February 2012, the Middle Class Tax Relief and Job Creation Act was enacted (Pub. L. 112-96, 126 Stat. 156 (2012)). Title VI of that statute, commonly known as the Spectrum Act, provides the Commission with the authority to conduct incentive auctions to meet the growing demand for wireless broadband. Pursuant to the Spectrum Act, the Commission may conduct incentive auctions that will offer new initial spectrum licenses subject to flexible-use service rules on spectrum made available by licensees that voluntarily relinquish some or all of their spectrum usage rights in exchange for a portion, based on the value of the relinquished rights as determined by an auction, of the proceeds of bidding for the new licenses. In addition to granting the Commission general authority to conduct incentive auctions, the Spectrum Act requires the Commission to conduct an incentive auction of broadcast TV spectrum and sets forth special requirements for such an auction.

The Spectrum Act requires that the BIA consist of a reverse auction "to determine the amount of compensation that each broadcast television licensee would accept in return for voluntarily relinquishing some or all of its spectrum usage rights" and a forward auction of licenses in the reallocated spectrum for

flexible-use services, including mobile broadband. Broadcast television licensees who elected to voluntarily participate in the auction had three bidding options: go off-the-air, share spectrum with another broadcast television licensee, or move channels to the upper or lower VHS band in exchange for receiving part of the proceeds from auctioning that spectrum to wireless providers. The Spectrum Act also authorized the Commission to reorganize the 600 MHz band following the BIA including, as necessary, reassigning full power and Class A television stations to new channels in order to clear the spectrum sold in the BIA. That post-auction reorganization (known as the repack) is currently underway and all of the stations who were assigned new channels are scheduled to have vacated their pre-auction channels by July 3, 2020, pursuant to a 10-phase transition schedule adopted by the Commission.

In May 2014, the Commission adopted a Report and Order that laid out the general framework for the BIA. The auction started on March 29, 2016, with the submission of initial commitments by eligible broadcast licensees. The BIA ended on April 13, 2017, with the release of the Auction Closing and Channel Reassignment Public Notice that also marked the start of the 39-month transition period during which 987 of the full power and Class A television stations remaining on-the-air will transition their stations to their post-auction channel assignments in the reorganized television band. Pursuant to the Spectrum Act, the Commission will reimburse 957 of those full power and Class A stations for the reasonable costs associated with relocating to their post-auction channel assignments and will reimburse multichannel video programming distributors for their costs associated with continuing to carry the signals of those stations.

In March 2018, the Consolidated Appropriations Act (Pub. L. 115–141, at Div. E, Title V, 511, 132 Stat. 348 (2018), codified at 47 U.S.C. 1452(j)–(n)) (the Reimbursement Expansion Act or REA), extended the deadline for reimbursement of eligible entities from April 2020 to no later than July 3, 2023, and also expanded the universe of entities eligible for reimbursement to include low-power television stations and TV translator stations displaced by the BIA for their reasonably incurred costs to relocate to a new channel, and FM broadcast stations for their reasonably incurred costs for facilities necessary to reasonably minimize disruption of service as a result of the post-auction reorganization of the

television band. On March 15, 2019, the Commission adopted a Report and Order setting rules for the reimbursement of eligible costs to those newly eligible entities.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/21/12	77 FR 69933
R&O .....	08/15/14	79 FR 48441
Final Rule .....	10/11/17	82 FR 47155
NPRM .....	08/27/18	83 FR 43613
R&O .....	03/26/19	84 FR 11233
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jean L. Kiddoo, Chair, Incentive Auction Task Force, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–7757, *Email:* [jean.kiddoo@fcc.gov](mailto:jean.kiddoo@fcc.gov).

*RIN:* 3060–AJ82

**519. Broadband Data Collection [3060–AL42]**

*Legal Authority:* 47 U.S.C. 151–154; 47 U.S.C. 157; 47 U.S.C. 201; 47 U.S.C. 254; 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 309; 47 U.S.C. 319; 47 U.S.C. 332; 47 U.S.C. 641–646

*Abstract:* On August 6, 2019, the Commission adopted a new data collection of precise, granular broadband availability data from fixed broadband providers, including a mechanism for incorporating public feedback into the data. On March 23, 2020, the Broadband Deployment Accuracy and Technology Availability Act (Broadband DATA Act) was enacted, establishing requirements for the Commission to adopt rules and carry out other steps for the collection and publication of granular data on the quality and availability of broadband internet service. On July 16, 2020, the Commission adopted a Second Report and Order and Third Further Notice of Proposed Rulemaking that took steps to implement requirements of the Broadband DATA Act, including the adoption of rules for the collection and verification of improved, more precise data on both fixed and mobile broadband availability. On January 13, 2021, the Commission adopted a Third Report and Order that took key additional steps to ensure that both the new data collection itself, and the measures for verifying the accuracy of the data collected, will yield a robust and reliable data resource for the Commission, Congress, federal and state policymakers, and consumers to evaluate the status of broadband

deployment throughout the United States.

*Timetable:*

Action	Date	FR Cite
3rd FNPRM .....	08/12/20	85 FR 50911
2nd R&O .....	08/18/20	85 FR 50886
3rd FNPRM Comment Period End.	09/08/20	
3rd FNPRM Reply Comment Period End.	09/17/20	
3rd R&O .....	04/07/21	86 FR 18124
Proposed Rule .....	07/28/21	86 FR 40398
Proposed Rule Comment Period End.	09/10/21	
Proposed Rule Reply Comment Period End.	09/27/21	
Order (release date).	03/09/22	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Kimia Nikseresht, Legal Advisor, Broadband Data Task Force, OEA, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1636, *Email:* [kimia.nikseresht@fcc.gov](mailto:kimia.nikseresht@fcc.gov).  
*RIN:* 3060–AL42

**FEDERAL COMMUNICATIONS COMMISSION (FCC)**

*Office of Engineering and Technology*

Long-Term Actions

**520. Use of the 5.850–5.925 GHz Band (ET Docket No. 19–138) [3060–AK96]**

*Legal Authority:* 47 U.S.C. 1; 47 U.S.C. 4(i); 47 U.S.C. 301; 47 U.S.C. 302; 47 U.S.C. 303; 47 U.S.C. 316; 47 U.S.C. 332; 47 CFR 1.411

*Abstract:* In this proceeding, we repurpose 45 megahertz of the 5.850–5.925 GHz band (the 5.9 GHz band) to allow for the expansion of unlicensed mid-band spectrum operations, while continuing to dedicate 30 megahertz of spectrum for vital intelligent transportation system (ITS) operations. In addition, to promote the most efficient and effective use of this ITS spectrum, we are requiring the ITS service to use cellular vehicle-to-everything (C–V2X) based technology at the end of a transition period. By splitting the 5.9 GHz band between unlicensed and ITS uses, today's decision puts the 5.9 GHz band in the best position to serve the needs of the American public.

In the Further Notice, the Commission addresses issues remaining to finalize



the restructuring of the 5.9 GHz band. Specifically, the Commission addresses: The transition of ITS operations in the 5.895–5.925 GHz band from Dedicated Short Range Communications (DSRC) based technology to Cellular Vehicle-to-Everything (C–V2X) based technology; the codification of C–V2X technical parameters in the Commission's rules; other transition considerations; and the transmitter power and emissions limits, and other issues, related to full-power outdoor unlicensed operations across the entire 5.850–5.895 GHz portion of the 5.9 GHz band. The Commission modified the Further Notice released on November 20, 2020, with an Erratum released on December 11, 2020. The Commission released a Second Erratum on February 9, 2021. The corrections from these errata are included in this document.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/06/20	85 FR 6841
NPRM Comment Period End.	03/09/20	
R&O & Order of Proposed Modification.	05/03/21	86 FR 23281
FNPRM .....	05/03/21	86 FR 23323
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Howard Griboff, Attorney Advisor, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0657, *Fax:* 202 418–2824, *Email:* [howard.griboff@fcc.gov](mailto:howard.griboff@fcc.gov).  
*RIN:* 3060–AK96

**521. Unlicensed White Space Device Operations in the Television Bands (ET Docket No. 20–36) [3060–AL22]**

*Legal Authority:* 47 U.S.C. 154(i); 47 U.S.C. 201; 47 U.S.C. 302a; 47 U.S.C. 303; 47 U.S.C. 1.407 and 1.411

*Abstract:* In this proceeding, the Commission revises its rules to provide additional opportunities for unlicensed white space devices operating in the broadcast television bands (TV bands) to deliver wireless broadband services in rural areas and applications associated with the Internet of Things (IoT). This region of the spectrum has excellent propagation characteristics that make it particularly attractive for delivering communications services over long distances, coping with variations in terrain, as well as providing coverage into and within buildings. We offer several proposals to spur continued growth of the white space device ecosystem, especially for providing

affordable broadband service to rural and underserved communities that can help close the digital divide.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/03/20	85 FR 18901
NPRM Comment Period End.	04/03/20	
R&O .....	01/12/21	86 FR 2278
Proposed Rule FR Published 2/25/21 at 86 FR 11490.	04/05/22	
2nd Order on Recon, FNPRM, and Other.	06/01/22	87 FR 33109
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Hugh Van Tuyl, Electronics Engineer, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–7506, *Fax:* 202 418–1944, *Email:* [hugh.vantuyl@fcc.gov](mailto:hugh.vantuyl@fcc.gov).  
*RIN:* 3060–AL22

**522. Protecting Against National Security Threats to the Communications Supply Chain Through the Equipment Authorization and Competitive Bidding Programs; ET Docket No. 21–232, EA Docket No. 21–233 [3060–AL23]**

*Legal Authority:* secs. 4(i), 301, 302, 303, 309(j), 312, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. secs. 154(i), 301, 302a, 303, 309(j), 312, 316, and sec. 1.411

*Abstract:* In this proceeding, the Commission proposes prohibiting the authorization of any communications equipment on the list of equipment and services (Covered List) that the Commission maintains pursuant to the Secure and Trusted Communications Networks Act of 2019. Such equipment has been found to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. We also seek comment on whether and under what circumstances we should revoke any existing authorizations of such covered communications equipment. We invite comment on whether we should require additional certifications relating to national security from applicants who wish to participate in Commission auctions. In the Notice of Inquiry, we seek comment on other actions the Commission should consider taking to create incentives in its equipment authorization processes for improved

trust through the adoption of cybersecurity best practices in consumer devices.

*Timetable:*

Action	Date	FR Cite
NPRM and NOI ...	08/19/21	86 FR 46644
NPRM Comment Period End.	09/20/21	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jamie Coleman, Attorney Advisor, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2705, *Email:* [jaimie.coleman@fcc.gov](mailto:jaimie.coleman@fcc.gov).  
*RIN:* 3060–AL23

**523. Wireless Microphones in the TV Bands (ET Docket No. 21–115), 600 MHz Guard Band, 600 MHz Duplex Gap, and the 941.5–944 MHz, 944–952 MHz, 952.850–956.250 MHz, 956.45–959.85 MHz, 1435–1525 MHz [3060–AL27]**

*Legal Authority:* 47 U.S.C. secs. 154(i), 201, 302a, 303, and secs. 1.407 and 1.411

*Abstract:* In this proceeding, the Commission seeks to enhance the spectral efficiency of wireless microphones by permitting a recently developed type of wireless microphone system, termed herein as a Wireless Multi-Channel Audio System (WMAS), to operate in certain frequency bands. This emerging technology would enable more wireless microphones to operate in the spectrum available for wireless microphone operations, and thus advances an important Commission goal of promoting efficient spectrum use. The Commission proposes to revise the applicable technical rules for operation of low-power auxiliary station (LPAS) devices to permit WMAS to operate in the broadcast television (TV) bands and other LPAS frequency bands on a licensed basis. The Commission also proposes to update the existing LPAS and wireless microphone rules to reflect the end of the post-Incentive auction transition period and update references to international wireless microphone standards.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/01/21	86 FR 35046
NPRM Comment Period End.	08/02/21	
Next Action Undetermined.		

*Regulatory Flexibility Analysis  
Required: Yes.*

*Agency Contact:* Hugh Van Tuyl, Electronics Engineer, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-7506, *Fax:* 202 418-1944, *Email:* hugh.vantuyl@fcc.gov.

*RIN:* 3060-AL27

**524. FCC Seeks To Enable State-of-the-Art Radar Sensors in 60 GHz Band [3060-AL36]**

*Legal Authority:* 47 U.S.C. 154(i), 201, 302a, 303, and secs. 1.407 and 1.411

*Abstract:* In this preceding, the Commission proposes to revise the Commission's rules to provide expanded operational flexibility to unlicensed field disturbance sensor (FDS) devices (e.g., radars) that operate in the 57-64 GHz band (60 GHz band). The Commission's proposal recognizes the increasing practicality of using mobile radar devices in the 60 GHz band to perform innovative and life-saving functions, including gesture control, detection of unattended children in vehicles, and monitoring of vulnerable medical patients, and it is designed to stimulate the development of new products and services in a wide variety of areas to include, for example, personal safety, autonomous vehicles, home automation, environmental control, and healthcare monitoring, while also ensuring coexistence among unlicensed FDS devices and current and future unlicensed communications devices in the 60 GHz band.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/19/21	86 FR 46661
NPRM Comment Period End.	10/18/21	
Next Action Undetermined.		

*Regulatory Flexibility Analysis  
Required: Yes.*

*Agency Contact:* Anh Wride, Electronics Engineer, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, *Phone:* 202 418-0577, *Fax:* 202 418-1944, *Email:* anh.wride@fcc.gov.

Thomas Struble, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-2470, *Email:* thomas.struble@fcc.gov.

*RIN:* 3060-AL36

**525. FCC Proposes To Update Equipment Authorization Rules To Incorporate New and Revised Industry Standards [3060-AL39]**

*Legal Authority:* 47 U.S.C. 154(i), 301, 302a, 303, and secs. 1.407 and 1.411

*Abstract:* We propose targeted updates to our rules to incorporate four new and updated standards that are integral to the testing of equipment and accreditation of laboratories that test RF devices.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/17/22	87 FR 15180
NPRM Comment Period End.	04/16/22	
Next Action Undetermined.		

*Regulatory Flexibility Analysis  
Required: Yes.*

*Agency Contact:* Brian Butler, Attorney, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-2702, *Email:* brian.butler@fcc.gov.

*RIN:* 3060-AL39

**526. Allocation of Spectrum for Non-Federal Space Launch Operations (ET Docket No. 13-115) [3060-AL44]**

*Legal Authority:* 47 U.S.C. 151, 152, 154(i), 155(c), 301, 303(c), 303(f), and 303(r)

*Abstract:* In this proceeding, the Federal Communications Commission (Commission) takes steps towards establishing a spectrum allocation and licensing framework that will provide regulatory certainty and improved efficiency and that will promote innovation and investment in the United States commercial space launch industry. In the Further Notice of Proposed Rulemaking, the Commission seeks comment on the definition of space launch operations, the potential allocation of spectrum for the commercial space launch industry, including the 420-430 MHz, 2025-2110 MHz, and 5650-5925 MHz bands. In addition, the Commission seeks comment on establishing service rules, including licensing and technical rules and coordination procedures, for the use of spectrum for commercial space launch operations. Finally, the Commission seeks to refresh the record on potential ways to facilitate Federal use of commercial satellite services in what are currently non-Federal satellite bands and enable more robust federal use of the 399.9-400.05 MHz band.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/10/21	86 FR 30860
NPRM Comment Period End.	08/09/21	
Next Action Undetermined.		

*Regulatory Flexibility Analysis  
Required: Yes.*

*Agency Contact:* Nicholas Oros, Supervisory Attorney Advisor, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-0636, *Email:* nicholas.oros@fcc.gov.

*RIN:* 3060-AL44

**FEDERAL COMMUNICATIONS COMMISSION (FCC)**

*Office of Engineering and Technology*

Completed Actions

**527. FCC Looks To Open the Door to New Wireless Microphone Technologies (ET Docket No. 21-115 & RM-11821 [3060-AL45])**

*Timetable:*

Action	Date	FR Cite
Duplicate of 3060-AL27.	10/12/22	

*RIN:* 3060-AL45

**FEDERAL COMMUNICATIONS COMMISSION (FCC)**

*International Bureau*

Long-Term Actions

**528. Update to Parts 2 and 25 Concerning Nongeostationary, Fixed-Satellite Service Systems, and Related Matters: IB Docket No. 16-408 [3060-AK59]**

*Legal Authority:* 47 U.S.C. 154(i); 47 U.S.C. 303; 47 U.S.C. 316

*Abstract:* On January 11, 2017, the Commission began a rulemaking to update its rules and policies concerning non-geostationary-satellite orbit (NGSO), fixed-satellite service (FSS) systems and related matters. The Commission proposed among other things, to provide for more flexible use of the 17.8-20.2 GHz bands for FSS, promote shared use of spectrum among NGSO FSS satellite systems, and remove unnecessary design restrictions on NGSO FSS systems. The Commission subsequently adopted a Report and Order establishing new sharing criteria among NGSO FSS systems and providing additional flexibility for FSS

spectrum use. The Commission also released a Further Notice of Proposed Rulemaking proposing to remove the domestic coverage requirement for NGSO FSS systems and later adopted a Second Report and Order removing this requirement.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/11/17	82 FR 3258
NPRM Comment Period End.	04/10/17	
FNPRM .....	11/15/17	82 FR 52869
R&O .....	12/18/17	82 FR 59972
FNPRM Comment Period End.	01/02/18	
2nd R&O .....	02/21/21	86 FR 11642
Next Action Undetermined.		

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Clay DeCell, Attorney Advisor, Federal Communications Commission, International Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-0803, *Email:* clay.decell@fcc.gov.

*RIN:* 3060-AK59

**529. Amendment of Parts 2 and 25 of the FCC Rules To Facilitate the Use of Earth Stations in Motion Communicating With Geostationary Orbit Space Stations in FSS Bands: IB Docket No. 17-95 [3060-AK84]**

*Legal Authority:* 47 U.S.C. 154(i); 47 U.S.C. 157(a); 47 U.S.C. 303; 47 U.S.C. 308(b); 47 U.S.C. 316

*Abstract:* In June 2017, the Commission began a rulemaking to streamline, consolidate, and harmonize rules governing earth stations in motion (ESIMs) used to provide satellite-based services on ships, airplanes and vehicles communicating with geostationary-satellite orbit (GSO), fixed-satellite service (FSS) satellite systems. In September 2018, the Commission adopted rules governing communications of ESIMs with GSO satellites. These rules addressed communications in the conventional C-, Ku-, and Ka-bands, as well as portions of the extended Ku-band. At the same time, the Commission also released a Further Notice of Proposed Rulemaking that sought comment on allowing ESIMs to operate in all of the frequency bands in which earth stations at fixed locations operating in GSO FSS satellite networks can be blanket-licensed. Specifically, comment was sought on expanding the frequencies available for communications of ESIMs with GSO FSS satellites to include the following frequency bands: 10.7–10.95 GHz, 11.2–11.45 GHz, 17.8–18.3 GHz,

18.8–19.3 GHz, 19.3–19.4 GHz, 19.6–19.7 GHz (space-to-Earth); and 28.6–29.1 GHz (Earth-to-space).

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/16/17	82 FR 27652
NPRM Comment Period End.	08/30/17	
OMB-approval for Information Collection of R&O Comment Period End.	08/28/18	
FNPRM .....	07/24/20	85 FR 44818
R&O .....	07/24/20	85 FR 44772
FNPRM Comment Period End.	09/22/20	
Next Action Undetermined.		

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Cindy Spiers, Attorney Advisor, Federal Communications Commission, International Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-1593, *Email:* cindy.spiers@fcc.gov.

*RIN:* 3060-AK84

**530. Further Streamlining Part 25 Rules Governing Satellite Services: IB Docket No. 18-314 [3060-AK87]**

*Legal Authority:* 47 U.S.C. secs. 154(i); 47 U.S.C. 161; 47 U.S.C. 303; 47 U.S.C. 316

*Abstract:* Under the Commission's rules, satellite operators must follow separate application and authorization processes for the satellites and earth stations that make up their networks and have no option for a single, unified network license. In a Notice of Proposed Rulemaking, the FCC proposed to create a new, optional, unified license to include both space stations and earth stations operating in a geostationary-satellite orbit, fixed-satellite service (GSO FSS) satellite network. In addition, the Commission proposed to repeal or modify unnecessarily burdensome rules in part 25 governing satellite services, such as annual reporting requirements. These proposals would greatly simplify the Commission's licensing and regulation of satellite systems. In a subsequent Report and Order, the Commission streamlined its rules governing satellite services by creating an optional framework for the authorization of blanket-licensed earth stations and space stations in a satellite system through a unified license. The Commission also aligned the build-out requirements for earth stations and space stations and eliminated unnecessary reporting rules.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/31/19	84 FR 638
NPRM Comment Period End.	03/18/19	
NPRM Reply Comment Period End.	04/16/19	
Report & Order ... Next Action Undetermined.	03/01/21	86 FR 11880

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Clay DeCell, Attorney Advisor, Federal Communications Commission, International Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-0803, *Email:* clay.decell@fcc.gov.

*RIN:* 3060-AK87

**531. Facilitating the Communications of Earth Stations in Motion With Non-Geostationary Orbit Space Stations: IB Docket No. 18-315 [3060-AK89]**

*Legal Authority:* 47 U.S.C. 154(i); 47 U.S.C. 157(a); 47 U.S.C. 303; 47 U.S.C. 308(b); 47 U.S.C. 316

*Abstract:* In November 2018, the Commission adopted a notice of proposed rulemaking that proposed to expand the scope of the Commission's rules governing ESIMs operations to cover communications with NGSO FSS satellites. Comment was sought on establishing a regulatory framework for communications of ESIMs with NGSO FSS satellites that would be analogous to that which exists for ESIMs communicating with GSO FSS satellites. In this context, comment was sought on: (1) allowing ESIMs to communicate in many of the same conventional Ku-band, extended Ku-band, and Ka-band frequencies that were allowed for communications of ESIMs with GSO FSS satellites (with the exception of the 18.6–18.8 GHz and 29.25–29.5 GHz frequency bands); (2) extending blanket licensing to ESIMs communicating with NGSO satellites; and (3) revisions to specific provisions in the Commission's rules to implement these changes. The specific frequency bands for communications of ESIMs with NGOS FSS satellites on which comment was sought are as follows: 10.7–11.7 GHz; 11.7–12.2 GHz; 14.0–14.5 GHz; 17.8–18.3 GHz; 18.3–18.6 GHz; 18.8–19.3 GHz; 19.3–19.4 GHz; 19.6–19.7 GHz; 19.7–20.2 GHz; 28.35–28.6 GHz; 28.6–29.1 GHz; and 29.5–30.0 GHz.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/28/18	83 FR 67180
NPRM Comment Period End.	03/13/19	
R&O .....	07/24/20	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Cindy Spiers, Attorney Advisor, Federal Communications Commission, International Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-1593, *Email:* cindy.spiers@fcc.gov.  
*RIN:* 3060-AK89

**532. Space Innovation; Mitigation of Orbital Debris in the New Space Age: IB Docket Nos. 18-313, 22-271 [3060-AK90]**

*Legal Authority:* 47 U.S.C. 154; 47 U.S.C. 157; 47 U.S.C. 301; 47 U.S.C. 302; 47 U.S.C. 303; 47 U.S.C. 307; 47 U.S.C. 308; 47 U.S.C. 309; 47 U.S.C. 310; 47 U.S.C. 319; 47 U.S.C. 332; 47 U.S.C. 336; 47 U.S.C. 605; 47 U.S.C. 721

*Abstract:* The Commission's current orbital debris rules were first adopted in 2004. Since then, significant changes have occurred in satellite technologies and market conditions, particularly in Low Earth Orbit, *i.e.*, below 2000 kilometers altitude. These changes include the increasing use of lower cost small satellites and proposals to deploy large constellations of non-geostationary satellite orbit (NGSO) systems, some involving thousands of satellites.

The NPRM proposes changes to improve disclosure of debris mitigation plans. The NPRM also makes proposals and seeks comment related to satellite disposal reliability and methodology, appropriate deployment altitudes in low-Earth-orbit, and on-orbit lifetime, with a particular focus on large NGSO satellite constellations. Other aspects of the NPRM include new rule proposals for geostationary orbit satellite (GSO) license term extension requests, and consideration of disclosure requirements related to several emerging technologies and new types of commercial operations, including rendezvous and proximity operations.

The Report and Order in this proceeding adopted a number of these proposals. In addition a Further Notice of Proposed Rulemaking sought comment on topics such as collision risk and casualty risk for multi-satellite systems, de-orbit timelines, maneuverability requirements, and indemnification and post mission disposal bond issues. The Commission

issued a Second Report and Order adopting a 5-year de-orbit timeframe for satellites ending their missions in or passing through the low-Earth Orbit region.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/19/19	84 FR 4742
NPRM Comment Period End.	05/06/19	
R&O .....	08/25/20	
FNPRM .....	08/25/20	85 FR 52422
FNPRM Comment Period End.	10/09/20	85 FR 52455
Second R&O .....	09/29/22	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Alexandra Horn, Attorney Advisor, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-1376, *Email:* alexandra.horn@fcc.gov.  
*RIN:* 3060-AK90

**533. Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership (IB Docket No. 16-155) [3060-AL12]**

*Legal Authority:* 47 U.S.C. 154(l); 47 U.S.C. 154(j); 47 U.S.C. 214; 47 U.S.C. 303; 47 U.S.C. 309; 47 U.S.C. 310; 47 U.S.C. 413; 47 U.S.C. 34-39; E.O. 10530; 3 U.S.C. 301

*Abstract:* In this proceeding, the Commission considers rules and procedures that streamline and improve the timeliness and transparency of the process by which the Commission refers certain applications and petitions for declaratory ruling to the Executive Branch agencies for assessment of any national security, law enforcement, foreign policy or trade policy issues related to foreign investment in the applicants and petitioners.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/24/16	81 FR 46870
NPRM Comment Period End.	09/02/16	
Public Notice .....	04/27/20	
Public Notice Comment Period End.	09/02/20	85 FR 29914
Report & Order ...	10/01/20	85 FR 76360
Public Notice .....	12/30/20	85 FR 12312
Public Notice Comment Period End.	04/19/21	
Second Report and Order Adopted.	09/30/21	86 FR 68428

Action	Date	FR Cite
Second R&O Released. Next Action Undetermined.	10/01/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Arthur T. Lechtman, Attorney Advisor, Federal Communications Commission, International Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-1465, *Fax:* 202 418-0175, *Email:* arthur.lechtman@fcc.gov.  
*RIN:* 3060-AL12

**534. Parts 2 and 25 To Enable GSO FSS in the 17.3-17.8 GHz Band, Modernize Rules for 17/24 GHz BSS Space Stations, and Establish Off-Axis Uplink Power Limits for Extended KA-Band FSS (IB Doc. No. 20-330) [3060-AL28]**

*Legal Authority:* 47 U.S.C. 154(i); 47 U.S.C. 303(r); 47 U.S.C. 309(j)

*Abstract:* This item addresses the addition of an allocation in the 17.3-17.7 GHz and 17.7-17.8 GHz bands to the fixed-satellite service in the space-to-Earth direction. The Notice of Proposed Rulemaking proposes to add these allocations to the U.S. Table of Frequency Allocations (non-Federal), and proposes modification of existing technical rules to prevent harmful interference between services in these bands.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/01/21	86 FR 7660
NPRM Comment Period End.	03/03/21	
NPRM Reply Comment Period End.	03/18/21	
R&O .....	09/03/22	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Sean O'More, Attorney Advisor, International Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 245 418-2453, *Email:* sean.omore@fcc.gov.  
*RIN:* 3060-AL28

**535. Revising Spectrum Sharing Rules for Non-Geostationary Orbit, Fixed-Satellite Service Systems: IB Docket No. 21-456 [3060-AL41]**

*Legal Authority:* 47 U.S.C. 154(i); 47 U.S.C. 157(a); 47 U.S.C. 303; 47 U.S.C. 308(b); 47 U.S.C. 316

*Abstract:* This Notice of Proposed Rulemaking (NPRM) seeks comment on

revisions to the spectrum sharing requirements among non-geostationary satellite orbit (NGSO), fixed-satellite service (FSS) systems. The NPRM proposes that the Commission's existing spectrum sharing mechanism for NGSO FSS systems will be limited to those systems approved in the same processing round. The NPRM also proposes to adopt a rule providing that later-round NGSO FSS systems will have to protect earlier-round systems, and invites comment on how to define such protection. In addition, the NPRM seeks comment on whether to sunset, after a period of time, the interference protection afforded to an NGSO FSS system because of its processing round status.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/24/22	87 FR 3481
NPRM Comment Period End.	03/25/22	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Clay DeCell, Attorney Advisor, Federal Communications Commission, International Bureau, 45 L Street NE, Washington, DC 20554, Phone: 202 418-0803, Email: clay.decell@fcc.gov. RIN: 3060-AL41

## FEDERAL COMMUNICATIONS COMMISSION (FCC)

### Media Bureau

#### Long-Term Actions

#### 536. Revision of EEO Rules and Policies (MM Docket No. 98-204) [3060-AH95]

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 257; 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 307 to 309; 47 U.S.C. 334; 47 U.S.C. 403; 47 U.S.C. 554

*Abstract:* FCC authority to govern Equal Employment Opportunity (EEO) responsibilities of cable television operators was codified in the Cable Communications Policy Act of 1984. This authority was extended to television broadcast licensees and other multi-channel video programming distributors (MVPDs) in the Cable and Television Consumer Protection Act of 1992. In the Second Report and Order, the FCC adopted new EEO rules and policies. This action was in response to a decision of the U.S. Court of Appeals for the District of Columbia Circuit that found prior EEO rules unconstitutional. The Third Notice of Proposed

Rulemaking (NPRM) requested comment as to the applicability of the EEO rules to part-time employees. The Third Report and Order adopted revised forms for broadcast station and MVPD Annual Employment Reports. The 2021 NPRM sought to update the existing record.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/14/02	67 FR 1704
Second R&O and Third NPRM.	01/07/03	68 FR 670
Correction .....	01/13/03	68 FR 1657
Fourth NPRM .....	06/23/04	69 FR 34986
Third R&O .....	06/23/04	69 FR 34950
FNPRM .....	08/31/21	86 FR 48610
FNPRM Comment Period End.	09/30/21	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Brendan Holland, Chief, Industry Analysis Division, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, Phone: 202 418-2757, Email: brendan.holland@fcc.gov RIN: 3060-AH95

#### 537. Establishment of Rules for Digital Low-Power Television, Television Translator, and Television Booster Stations (MB Docket No. 03-185) [3060-AI38]

*Legal Authority:* 47 U.S.C. 309; 47 U.S.C. 336

*Abstract:* This proceeding initiated the digital television conversion for low-power television (LPTV) and television translator stations. The rules and policies adopted as a result of this proceeding provide the framework for these stations' conversion from analog to digital broadcasting.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/26/03	68 FR 55566
NPRM Comment Period End.	11/25/03	
R&O .....	11/29/04	69 FR 69325
FNPRM and MO&O.	10/18/10	75 FR 63766
2nd R&O .....	07/07/11	76 FR 44821
3rd NPRM .....	11/28/14	79 FR 70824
NPRM Comment Period End.	12/29/14	
NPRM Reply Comment Period End.	01/12/15	
3rd R&O .....	02/01/16	81 FR 5041
4th NPRM .....	02/01/16	81 FR 5086
Comment Period End.	02/22/16	
NPRM .....	12/23/19	84 FR 70489
5th NPRM .....	06/17/22	87 FR 36440

Action	Date	FR Cite
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Shaun Maher, Attorney, Video Division, Federal Communications Commission, Media Bureau, 45 L Street NE, Washington, DC 20554, Phone: 202 418-2324, Fax: 202 418-2827, Email: shaun.maher@fcc.gov. RIN: 3060-AI38

#### 538. Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard (GN Docket No. 16-142) [3060-AK56]

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 157; 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 307 to 309; 47 U.S.C. 316; 47 U.S.C. 319; 47 U.S.C. 325(b); 47 U.S.C. 336; 47 U.S.C. 399(b); 47 U.S.C. 403; 47 U.S.C. 534; 47 U.S.C. 535

*Abstract:* In this proceeding, the Commission seeks to authorize television broadcasters to use the "Next Generation" ATSC 3.0 broadcast television transmission standard on a voluntary, market-driven basis, while they continue to deliver current-generation digital television broadcast service to their viewers. In the Report and Order, the Commission adopted rules to afford broadcasters flexibility to deploy ATSC 3.0-based transmissions, while minimizing the impact on, and costs to, consumers and other industry stakeholders.

In the 2nd R&O, the Commission provided additional guidance to broadcasters deploying Next Gen TV.

In 2021, the Commission made a technical modification to the rules governing the use of a distribution transmission system by a television station to account for deployment of ATSC 3.0. Further, the Commission released an FNPRM that sought comment on rule changes designed to preserve over-the-air viewers access to the widest possible range of television programming. The 3rd FNPRM sought comment on the state of the Next Gen TV transition.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/10/17	82 FR 13285
NPRM Comment Period End.	05/09/17	
FNPRM .....	12/20/17	82 FR 60350
R&O .....	02/02/18	83 FR 4998
FNPRM Comment Period End.	02/20/18	

Action	Date	FR Cite
FNPRM Reply Comment Pe- riod End.	03/20/18	
NPRM .....	05/13/20	85 FR 28586
2nd R&O Order on Recon.	07/17/20	85 FR 43478
Report & Order ...	04/22/21	86 FR 21217
FNPRM .....	12/13/21	86 FR 70793
FNPRM Comment Period End.	02/11/22	
3rd FNPRM .....	07/07/22	87 FR 40464
Next Action Unde- termined.		

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Ty Bream, Attorney Advisor, Industry Analysis Div., Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-0644, *Email:* ty.bream@fcc.gov.

*RIN:* 3060-AK56

**539. 2018 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules (MB Docket 18-349) [3060-AK77]**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 152(a); 47 U.S.C. 154(i); 47 U.S.C. 257; 47 U.S.C. 303; 47 U.S.C. 307; 47 U.S.C. 309 and 310; 47 U.S.C. 403; sec. 202(h) of the Telecommunications Act

*Abstract:* Section 202(h) of the Telecommunications Act of 1996 requires the Commission to review its broadcast ownership rules every 4 years and to determine whether any such rules are necessary in the public interest as the result of competition. The rules subject to review in the 2018 quadrennial review are the Local Radio Ownership Rule, the Local Television Ownership Rule, and the Dual Network Rule. The Commission also sought comment on potential pro-diversity proposals including extending cable procurement requirements to broadcasters, adopting formulas aimed at creating media ownership limits that promote diversity, and developing a model for market-based, tradeable diversity credits to serve as an alternative method for setting ownership limits.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/28/19	84FR 6741
Next Action Unde- termined.		

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Brendan Holland, Chief, Industry Analysis Division, Media Bureau, Federal Communications Commission, 45 L Street NE,

Washington, DC 20554, *Phone:* 202 418-2757, *Email:* brendan.holland@fcc.gov.  
*RIN:* 3060-AK77

**540. Equal Employment Opportunity Enforcement (MB Docket 19-177) [3060-AK86]**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 334; 47 U.S.C. 554

*Abstract:* In this proceeding, the Commission seeks comment on ways in which it can make improvements to equal employment opportunity (EEO) compliance and enforcement.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/22/19	84 FR 35063
Next Action Unde- termined.		

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Radhika Karmarker, Attorney Advisor, IAD, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-1523, *Email:* radhika.karmarker@fcc.gov.

*RIN:* 3060-AK86

**541. Duplication of Programming on Commonly Owned Radio Stations (MB Docket No. 19-310) [3060-AL19]**

*Legal Authority:* 47 U.S.C. 151, 154(i), 154(j), and 303(r)

*Abstract:* In this proceeding, the Commission eliminated the radio duplication rule. The rule bars same-service (AM or FM) commercial radio stations from duplicating more than 25% of their total hours of programming in an average broadcast week if the stations have 50% or more contour overlap and are commonly owned or subject to a time brokerage agreement. Petitions for reconsideration are pending.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/23/19	84 FR 70485
Report & Order ...	10/22/20	85 FR 67303
Next Action Unde- termined.		

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Brendan Holland, Chief, Industry Analysis Division, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-2757, *Email:* brendan.holland@fcc.gov.

*RIN:* 3060-AL19

**542. Sponsorship Identification Requirements for Foreign Government-Provided Programming (Mb Docket No. 20-299) [3060-AL20]**

*Legal Authority:* 47 U.S.C. 151, 154, 155, 301, 303, 307, 309, 310, 334, 336, 339

*Abstract:* In this proceeding, the Commission modifies its rules to require specific disclosure requirements for broadcast programming that is paid for, or provided by a foreign government or its representative. Petitions for reconsideration are pending.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/24/20	85 FR 74955
R&O .....	06/17/21	86 FR 32221
Next Action Unde- termined.		

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Radhika Karmarker, Attorney Advisor, IAD, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-1523, *Email:* radhika.karmarker@fcc.gov.

*RIN:* 3060-AL20

**543. FM Broadcast Booster Stations (MB Docket 20-401) [3060-AL21]**

*Legal Authority:* 47 U.S.C. 151, 154, 157, 301, 302, 303, 307, 308, 309, 316, 319, 324

*Abstract:* In this proceeding, the Commission proposes to amend its rules to enable FM broadcasters to use FM booster stations to air geo-targeted content (e.g., news, weather, and advertisements) independent of the signals of its primary station within different portions of the primary station's protected service contour for a limited period of time during the broadcast hour.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/11/21	86 FR 1909
Next Action Unde- termined.		

*Regulatory Flexibility Analysis**Required: Yes.*

*Agency Contact:* Al Shuldiner, Chief, Audio Div., Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-2700, *Email:* albert.shuldiner@fcc.gov.

*RIN:* 3060-AL21

**544. • Update to Publication for Television Broadcast Station DMA Determinations for Cable and Satellite Carriage (MB Docket No. 22–239) [3060–AL46]**

*Legal Authority:* 47 U.S.C. 151, 152, 154(i), 154(j), 303, 325, 335, 338, 339, 340, 403, and 534

*Abstract:* In this proceeding, the Commission considers referencing a new publication for use in determining a television station's designated market area for satellite and cable carriage under the Commission's regulations.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/28/22	87 FR 45288
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Kenneth Lewis, Attorney Advisor, Federal Communications Commission, Media Bureau, 445 12th Street SW, Washington, DC 20554, *Phone:* 202 418–2622, *Email:* kennth.lewis@fcc.gov.  
*RIN:* 3060–AL46

**FEDERAL COMMUNICATIONS COMMISSION (FCC)**

*Office of Managing Director*

Long-Term Actions

**545. Assessment and Collection of Regulatory Fees [3060–AK64]**

*Legal Authority:* 47 U.S.C. 159  
*Abstract:* Section 9 of the Communications Act of 1934, as amended (47 U.S.C. 159), requires the Federal Communications Commission to recover the cost of its activities by assessing and collecting annual regulatory fees from beneficiaries of the activities.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/06/17	82 FR 26019
R&O .....	09/22/17	82 FR 44322
NPRM .....	06/14/18	83 FR 27846
NPRM Comment Period End.	06/21/18	
R&O .....	09/18/18	83 FR 47079
NPRM .....	06/05/19	84 FR 26234
NPRM Comment Period End.	06/07/19	
R&O .....	09/26/19	84 FR 50890
NPRM .....	05/08/20	85 FR 32256
R&O .....	06/22/20	85 FR 37364
NPRM .....	05/13/21	86 FR 26262
R&O .....	05/17/21	86 FR 26677
NPRM .....	09/21/21	86 FR 52429
R&O .....	09/22/21	86 FR 52742

Action	Date	FR Cite
NPRM Comment Period End.	10/21/21	
NPRM .....	06/28/22	87 FR 38588
Report & Order ...	09/14/22	87 FR 56494
Next Action Undetermined.		

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Roland Helvajian, Office of the Managing Director, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, *Phone:* 202 418–0444, *Email:* roland.helvajian@fcc.gov.  
*RIN:* 3060–AK64

**FEDERAL COMMUNICATIONS COMMISSION (FCC)**

*Public Safety and Homeland Security Bureau*

Long-Term Actions

**546. Wireless E911 Location Accuracy Requirements: PS Docket No. 07–114 [3060–AJ52]**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 332

*Abstract:* This rulemaking is related to the proceedings in which the FCC previously acted to improve the quality of all emergency services. Wireless carriers must provide specific automatic location information in connection with 911 emergency calls to Public Safety Answering Points (PSAPs). Wireless licensees must satisfy enhanced 911 location accuracy standards at either a county-based or a PSAP-based geographic level.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/20/07	72 FR 33948
R&O .....	02/14/08	73 FR 8617
Public Notice .....	09/25/08	73 FR 55473
FNPRM; NOI .....	11/02/10	75 FR 67321
Public Notice .....	11/18/09	74 FR 59539
2nd R&O .....	11/18/10	75 FR 70604
Second NPRM .....	08/04/11	76 FR 47114
Second NPRM Comment Period End.	11/02/11	
Final Rule .....	04/28/11	76 FR 23713
NPRM, 3rd R&O, and 2nd FNPRM.	09/28/11	76 FR 59916
3rd FNPRM .....	03/28/14	79 FR 17820
Order Extending Comment Period.	06/10/14	79 FR 33163
3rd FNPRM Comment Period End.	07/14/14	
Public Notice (Release Date).	11/20/14	

Action	Date	FR Cite
Public Notice Comment Period End.	12/17/14	
4th R&O .....	03/04/15	80 FR 11806
Final Rule .....	08/03/15	80 FR 45897
Order Granting Waiver.	07/10/17	
NPRM .....	09/26/18	83 FR 54180
4th NPRM .....	03/18/19	84 FR 13211
5th R&O .....	01/16/20	85 FR 2660
5th NPRM .....	01/16/20	85 FR 2683
5th NPRM Comment Period End.	03/16/20	
6th R&O and Order on Recon.	08/28/20	85 FR 53234
Next Action Undetermined.		

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Brenda Boykin, Deputy Chief, Policy & Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2062, *Email:* brenda.boykin@fcc.gov.  
*RIN:* 3060–AJ52

**547. Improving Outage Reporting for Submarine Cables and Enhancing Submarine Cable Outage Data; GN Docket No. 15–206 [3060–AK39]**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 34 to 39; 47 U.S.C. 301

*Abstract:* This proceeding takes steps toward assuring the reliability and resiliency of submarine cables, a critical piece of the Nation's communications infrastructure, by proposing to require submarine cable licensees to report to the Commission when outages occur and communications are disrupted. The Commission's intent is to enhance national security and emergency preparedness by these actions. In December 2019, the Commission adopted an Order on Reconsideration that modifies the requirement for submarine cable licensees to report outages to the Commission.

*Timetable:*

Action	Date	FR Cite
NPRM (Release Date).	09/18/15	
R&O .....	06/24/16	81 FR 52354
Petitions for Recon.	09/08/16	
Petitions for Recon—Public Comment.	10/17/16	81 FR 75368
Order on Recon ..	12/20/19	84 FR 15733
PRA Approval for new collection.	03/25/21	



Action	Date	FR Cite
Public Notice re effective date.	04/28/21	
Compliance Date for New Rules.	10/28/21	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Scott Cinnamon, Attorney-Advisor, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2319, *Email:* [scott.cinnamon@fcc.gov](mailto:scott.cinnamon@fcc.gov).

*RIN:* 3060–AK39

**548. Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications: PS Docket No. 15–80 [3060–AK40]**

*Legal Authority:* sec. 1, 4(i), 4(j), 4(o), 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j); 316, 332, 403, 615a–1, and 615c of Pub. L. 73–416, 4 Stat. 1064, as amended; and sec. 706 of Pub. L. 104–104, 110 Stat. 56; 47 U.S.C. 151, 154(i)–(j) & (o), 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307; 309(a), 309(j), 316, 332, 403, 615a–1, 615c, and 1302, unless otherwise noted

*Abstract:* The 2004 Report and Order (R&O) extended the Commission's communication disruptions reporting rules to non-wireline carriers and streamlined reporting through a new electronic template (see docket ET Docket 04–35). In 2015, this proceeding, PS Docket 15–80, was opened to amend the original communications disruption reporting rules from 2004 in order to reflect technology transitions observed throughout the telecommunications sector. The Commission seeks to further study the possibility to share the reporting database information and access with State and other Federal entities. In May 2016, the Commission released a Report and Order, FNPRM, and Order on Reconsideration (see also Dockets 11–82 and 04–35). The R&O adopted rules to update the part 4 requirements to reflect technology transitions. The FNPRM sought comment on sharing information in the reporting database. Comments and replies were received by the Commission in August and September 2016.

In March 2020, the Commission adopted a Second Further Notice of Proposed Rulemaking in PS Docket No. 15–80 that proposed a framework to provide state and federal agencies with access to outage information to improve their situational awareness while preserving the confidentiality of this

data, including proposals to: provide direct, read-only access to NORS and DIRS filings to qualified agencies of the 50 states, the District of Columbia, Tribal nations, territories, and federal government; allow these agencies to share NORS and DIRS information with other public safety officials that reasonably require NORS and DIRS information to prepare for and respond to disasters; allow participating agencies to publicly disclose NORS or DIRS filing information that is aggregated and anonymized across at least four service providers; condition a participating agency's direct access to NORS and DIRS filings on their agreement to treat the filings as confidential and not disclose them absent a finding by the Commission that allows them to do so; and establish an application process that would grant agencies access to NORS and DIRS after those agencies certify to certain requirements related to maintaining confidentiality of the data and the security of the databases. In March 2021, the Commission adopted the proposed information sharing framework with some modifications in a Second Report and Order. In April 2021, in a Notice of Proposed Rulemaking, the Commission proposed to codify a rule adopted in 2016 that exempts satellite and terrestrial wireless providers from reporting outages that potentially affect special offices and facilities, as defined in Commission rules. This proceeding addresses the Commission's efforts to improve the utility of its efforts to track network outages and disruptions and does not promote the administration's specified priorities.

In May 2021, the California Public Utilities Commission (CPUC) filed a Petition for Reconsideration (PFR) requesting that the Commission reconsider its decision in the Second Report and Order to maintain the presumption of confidentiality applied to NORS and DIRS filings. The Commission sought comment on the PFR's requests.

*Timetable:*

Action	Date	FR Cite
NPRM, 2nd R&O, Order on Recon.	06/16/15	80 FR 34321
NPRM Comment Period End.	07/31/15	
R&O .....	07/12/16	81 FR 45055
FNPRM, 1 Part 4 R&O, Order on Recon.	08/11/16	81 FR 45059
Order Denying Reply Comment Deadline Extension Request.	09/08/16	

Action	Date	FR Cite
FNPRM Comment Period End.	09/12/16	
Announcement of Effective Date for Rule Changes in R&O.	06/22/17	82 FR 28410
Announcement of Effective Date for Rule Changes in R&O.	06/22/17	82 FR 28410
Second Further NPRM.	02/28/20	85 FR 17818
Second Further NPRM Comment Period End.	06/01/20	
2nd R&O .....	04/29/21	86 FR 22796
3rd NPRM .....	06/30/21	86 FR 34679
CPUC PFR Comment Period End.	08/23/21	86 FR 40801
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Saswat Misra, Attorney-Advisor, Public Safety and Homeland Security Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0944, *Email:* [saswat.misra@fcc.gov](mailto:saswat.misra@fcc.gov).

*RIN:* 3060–AK40

**549. New Part 4 of the Commission's Rules Concerning Disruptions to Communications; ET Docket No. 04–35 [3060–AK41]**

*Legal Authority:* 47 U.S.C. 154 and 155; 47 U.S.C. 201; 47 U.S.C. 251; 47 U.S.C. 307; 47 U.S.C. 316

*Abstract:* The proceeding creates a new part 4 in title 47 and amends part 63.100. The proceeding updates the Commission's communication disruptions reporting rules for wireline providers formerly in 47 CFR 63.100 and extends these rules to other non-wireline providers. Through this proceeding, the Commission streamlines the reporting process through an electronic template. The Report and Order received several petitions for reconsideration, of which two were eventually withdrawn. In 2015, seven were addressed in an Order on Reconsideration and in 2016 another petition was addressed in an Order on Reconsideration. One petition (CPUC Petition) remains pending regarding NORS database sharing with States, which is addressed in a separate proceeding, PS Docket 15–80. To the extent the communication disruption rules cover VoIP, the Commission



studies and addresses these questions in a separate docket, PS Docket 11–82.

In May 2016, the Commission released a Report and Order, FNPRM, and Order on Reconsideration (see Dockets 11–82 and 15–80). The Order on Reconsideration addressed outage reporting for events at airports, and the FNPRM sought comment on database sharing. The Commission received comments and replies in August and September 2016.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/26/04	69 FR 15761
R&O .....	11/26/04	69 FR 68859
Denial for Petition for Partial Stay.	12/02/04	
Seek Comment on Petition for Recon.	02/02/10	
Reply Period End	03/19/10	
Seek Comment on Broadband and Inter-connected VOIP Service Providers.	07/02/10	
Reply Period End	08/16/12	
2nd R&O, and Order on Recon, NPRM.	06/16/15	80 FR 34321
R&O .....	07/12/16	81 FR 45055
FNPRM, 1 Part 4 R&O, Order on Recon.	08/11/16	81 FR 45095, 81 FR 45055
Order Denying Extension of Time to File Reply Comments.	09/08/16	
Announcement of Effective Date for Rule Changes in R&O.	06/22/17	82 FR 28410
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Saswat Misra, Attorney-Advisor, Public Safety and Homeland Security Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0944, *Email:* [saswat.misra@fcc.gov](mailto:saswat.misra@fcc.gov), *RIN:* 3060–AK41

**550. Wireless Emergency Alerts (WEA): PS Docket No. 15–91 [3060–AK54]**

*Legal Authority:* Pub. L. 109–347, title VI; 47 U.S.C. 151; 47 U.S.C. 154(i)

*Abstract:* This proceeding was initiated to improve Wireless Emergency Alerts (WEA) messaging, ensure that WEA alerts reach only those individuals to whom they are relevant, and establish an end-to-end testing

program based on advancements in technology.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/19/15	80 FR 77289
NPRM Comment Period End.	01/13/16	
NPRM Reply Comment Period End.	02/12/16	
Order .....	11/01/16	81 FR 75710
FNPRM .....	11/08/16	81 FR 78539
Comment Period End.	12/08/16	
Petition for Recon	12/19/16	81 FR 91899
Order on Recon ..	12/04/17	82 FR 57158
2nd R&O and 2nd Order on Recon.	02/28/18	83 FR 8619
Public Notice .....	04/26/18	83 FR 18257
Public Notice Comment Period End.	05/29/18	
Public Notice Reply Comment Period End.	06/11/18	
FNPRM .....	05/20/22	87 FR 30857
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* James Wiley, Attorney Advisor, Public Safety and Homeland Security Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1678, *Email:* [james.wiley@fcc.gov](mailto:james.wiley@fcc.gov), *RIN:* 3060–AK54

**551. 911 Fee Diversion Rulemaking: PS Docket Nos. 20–291, 09–14 [3060–AL31]**

*Legal Authority:* Consolidated Appropriations Act, 2021, Pub. L. 116–260, Division FF, title 1X, sec. 902, Don't Break Up the T-Band Act of 2020 (sec. 902)

*Abstract:* In 2020, Congress adopted the “Don't Break Up the T-Band Act” (section 902) to help address the diversion of 911 fees by states and other jurisdictions for purposes unrelated to 911. Among other requirements, Congress mandated that the Commission should issue final rules designating the uses of 911 fees by states and taxing jurisdictions that constitute 911 fee diversion for purposes of 47 U.S.C. 615a–1, as amended by section 902. The Commission initiated this proceeding and issued new rules at 47 CFR 9.21–9.26 that: (1) clarify the purposes and functions for which expenditures of 911 fees are acceptable and which would be considered unacceptable and constitute diversion, with illustrative, non-exhaustive examples of each; (2) establish a declaratory ruling process for providing

further guidance to states and taxing jurisdictions on fee diversion issues; and (3) codify the specific obligations and restrictions that section 902 imposes on states and taxing jurisdictions, including those that engage in diversion as defined by the Commission's rules.

*Timetable:*

Action	Date	FR Cite
Notice of Inquiry	10/02/20	
NOI Comment Period End.	11/02/20	
NOI Reply Comment Period End.	12/02/20	
NPRM .....	02/17/21	86 FR 12399
NPRM Comment Period End.	03/23/21	
NPRM Reply Comment Period End.	04/02/21	86 FR 12399
Report & Order ...	06/25/21	86 FR 45892
R&O Erratum .....	08/12/21	86 FR 45892
Petition for Recon	12/22/21	86 FR 72546
Oppositions to Petition for Recon.	01/06/22	
Replies to Oppositions to Petition for Recon.	01/18/22	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Brenda Boykin, Deputy Chief, Policy & Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2062, *Email:* [brenda.boykin@fcc.gov](mailto:brenda.boykin@fcc.gov), *RIN:* 3060–AL31

**552. Resilient Networks, Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; PS Docket No 21–346, PS Docket No. 15–80, ET Docket No. 04–35 [3060–AL43]**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i)–(j); 47 U.S.C. 154(n)–(o); 47 U.S.C. 201; 47 U.S.C. 202; 47 U.S.C. 214; 47 U.S.C. 218; 47 U.S.C. 251(e)(3); 47 U.S.C. 254; 47 U.S.C. 301; 47 U.S.C. 303(b); 47 U.S.C. 303(g); 47 U.S.C. 303(r); 47 U.S.C. 307; 47 U.S.C. 309(a); 47 U.S.C. 309(j); 47 U.S.C. 316; 47 U.S.C. 332; 47 U.S.C. 403; . . .

*Abstract:* In October 2021, the Commission adopted a Notice of Proposed Rulemaking (NPRM) to investigate ways to improve the reliability and resiliency of communications networks during emergencies and ways to ensure that communications services remain

operational when disasters strike. The NPRM sought comment on: (i) potential improvements to the voluntary Wireless Resiliency Cooperative Framework (Framework), including evaluating what triggers its activation, its scope of participants, whether existing Framework elements can be strengthened, any gaps that need to be addressed, and whether the public would benefit from codifying some or all of the Framework, (ii) ways to enhance the information available to the Commission through Network Outage Reporting System (NORS) and Disaster Information Reporting System (DIRS) during disasters and network outages to improve situational awareness, and (iii) communications resiliency strategies for power outages, including improved coordination between communications service providers and power companies and deploying onsite backup power or other alternative measures to reduce the frequency, duration, or severity of power-related disruptions to communications services. In June 2022, the Commission adopted a Report & Order (R&O) and Further Notice of Proposed Rulemaking (FNPRM) following up on and further addressing matters related to the Framework. The R&O introduced the MDRI, which largely codifies the Framework's five substantive provisions as mandatory, extended the reach of these provisions to all facilities-based mobile wireless providers, expanded the real-world criteria that trigger activation of the MDRI (as compared to the Framework) and introduced new provisions requiring providers to test their roaming capabilities and report on the performance of their implementation of the MDRI to the Commission after disaster events. The FNPRM examined whether and how the new reporting requirement can be standardized to ensure that the Commission obtains vital and actionable information on the performance of providers' implementation of the MDRI in the aftermath of exigency, while also minimizing associated burdens. This proceeding addresses network reliability in the context of public safety and does not promote the administration's specified priorities.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/01/21	86 FR 61103
NPRM Comment Period End.	01/14/22	
FNPRM .....	06/27/22	87 FR 59379
R&O .....	06/27/22	87 FR 59329
FNPRM Comment Period End.	10/31/22	

Action	Date	FR Cite
FNPRM Reply Comment Period End. Next Action Undetermined.	11/29/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Saswat Misra, Attorney-Advisor, Public Safety and Homeland Security Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-0944, *Email:* [saswat.misra@fcc.gov](mailto:saswat.misra@fcc.gov), *RIN:* 3060-AL43

**FEDERAL COMMUNICATIONS COMMISSION (FCC)**

*Public Safety and Homeland Security Bureau*

Completed Actions

**553. Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks [3060-AI78]**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 218; 47 U.S.C. 303(r)

*Abstract:* In the Order released June 8, 2007 (EB Docket No. 06-119 and WC Docket No. 06-63), the Commission directed the Public Safety and Homeland Security Bureau to implement several of the recommendations made by the Independent Panel reviewing the impact of Hurricane Katrina on Communications Networks (Independent Panel). The Commission also adopted rules requiring some communications providers to have emergency/backup power and requiring certain communications providers to conduct analyses and submit reports on the redundancy and resiliency of their 911 and E911 networks and/or systems. Finally, the Commission extended limited regulatory relief from section 272 of the Communications Act of 1934, as amended, previously accorded by the Wireline Competition Bureau. In an Order on Reconsideration released on October 4, 2007, the Commission considered six petitions for reconsideration and/or clarification of the June 2007 Order that adopted the backup power rule (sec. 12.2 of the Commission's rules). The Order on Reconsideration granted in part and denied in part the petitions. The Commission modified the backup power rule to address several meritorious issues raised by petitioners. This

modification will facilitate carrier compliance and reduce the burden on local exchange carriers and commercial mobile radio service providers, while continuing to further important homeland security and public safety goals. The wireless industry challenged the backup power rule in the U.S. Court of Appeals for the District of Columbia Circuit and, with some wireline providers, challenged the associated information collection before OMB. In February 2008, the Court issued a stay of the rule pending appeal, and, on July 8, 2008, the Court issued an order holding its decision on the challenge to the backup power rule in abeyance pending action by OMB on the information collection associated with the revised rule. In November 2008, OMB rejected the information collection. As a result of the actions by the Court and OMB, the backup power rule has never gone into effect. In December 2008, the FCC's Office of General Counsel requested that the Court dismiss the pending appeals of the backup power rule and informed the Court that the Commission plans to issue an NPRM to develop a revised rule. On July 31, 2009, the Court dismissed the petitions for review as moot and ordered that the backup power rule by vacated and this mandate was issued until September 18, 2009.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/07/06	71 FR 38564
NPRM Comment Period End.	08/07/06	
Order .....	07/11/07	72 FR 37655
Delay of Effective Date of Rule.	08/10/07	72 FR 44978
Petitions for Recon.	08/20/07	72 FR 46485
Order on Recon	10/11/07	72 FR 57879

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Lisa Fowlkes, Bureau Chief, Federal Communications Commission, Public Safety and Homeland Security Bureau, 445 12th Street SW, Washington, DC 20554, *Phone:* 202 418-7452, *Email:* [lisa.fowlkes@fcc.gov](mailto:lisa.fowlkes@fcc.gov), *RIN:* 3060-AI78

**FEDERAL COMMUNICATIONS COMMISSION (FCC)***Wireless Telecommunications Bureau*

## Long-Term Actions

**554. Amendment of Parts 1, 2, 22, 24, 27, 90, and 95 of the Commission's Rules To Improve Wireless Coverage Through the Use of Signal Boosters (WT Docket No. 10–4) [3060–A]87]**

*Legal Authority:* 15 U.S.C. 79; 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 155; 47 U.S.C. 157; 47 U.S.C. 225; 47 U.S.C. 227; 47 U.S.C. 303(r)

*Abstract:* This action adopts new technical, operational, and registration requirements for signal boosters. It creates two classes of signal boosters—consumer and industrial—with distinct regulatory requirements for each, thereby establishing a two-step transition process for equipment certification for both consumer and industrial signal boosters sold and marketed in the United States.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/10/11	76 FR 26983
R&O .....	04/11/13	78 FR 21555
Petition for Reconsideration.	06/06/13	78 FR 34015
Order on Reconsideration.	11/08/14	79 FR 70790
FNPRM .....	11/28/14	79 FR 70837
2nd R&O and 2nd FNPRM.	03/23/18	83 FR 17131
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jaclyn Rosen, Federal Communications Commission, Wireless Telecommunications Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0154, *Email:* [jaclyn.rosen@fcc.gov](mailto:jaclyn.rosen@fcc.gov), *RIN:* 3060–A]87

**555. Promoting Technological Solutions To Combat Wireless Contraband Device Use in Correctional Facilities; GN Docket No. 13–111 [3060–AK06]**

*Legal Authority:* 47 U.S.C. 151 to 152; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 301; 47 U.S.C. 303(a); 47 U.S.C. 303(b); 47 U.S.C. 307 to 310; 47 U.S.C. 332; 47 U.S.C. 302(a)

*Abstract:* In the 2017 Report and Order, 82 FR 22742, the Commission addressed the problem of illegal use of contraband wireless devices by inmates in correctional facilities by streamlining the process of deploying contraband wireless device interdiction systems (CIS)—systems that use radio

communications signals requiring Commission authorization—in correctional facilities. In particular, the Commission eliminated certain filing requirements and provides for immediate approval of the lease applications needed to operate these systems. In the 2017 Further Notice, 82 FR 22780, the Commission sought comment on a process for wireless providers to disable contraband wireless devices once they have been identified. The Commission also sought comment on additional methods and technologies that might prove successful in combating contraband device use in correctional facilities, and on various other proposals related to the authorization process for CISs and their deployment.

In the Second Report and Order, the Commission takes further steps to facilitate the deployment and viability of technological solutions used to combat contraband wireless devices in correctional facilities. The Second Report and Order adopts a framework requiring the disabling of contraband wireless devices detected in correctional facilities upon satisfaction of certain criteria, and the Commission addresses issues involving oversight, wireless provider liability, and treatment of 911 calls. The Second Report and Order further adopts rules requiring advance notice of certain wireless provider network changes to promote and maintain contraband interdiction system effectiveness. In the Second Further Notice of Proposed Rulemaking, the Commission takes further steps to facilitate the deployment and viability of technological solutions used to combat contraband wireless devices in correctional facilities. The Second Further Notice of Proposed Rulemaking seeks further comment on the relative effectiveness, viability, and cost of additional technological solutions to combat contraband phone use in correctional facilities previously identified in the record.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/18/13	78 FR 36469
NPRM Comment Period End.	08/08/13	
FNPRM .....	05/18/17	82 FR 22780
R&O .....	05/18/17	82 FR 22742
Final Rule Effective (Except for Rules Requiring OMB Approval).	06/19/17	
FNPRM Comment Period End.	07/17/17	

Action	Date	FR Cite
Final Rule Effective for 47 CFR 1.9020(n), 1.9030(m), 1.9035 (o), and 20.23(a).	10/20/17	82 FR 48773
Final Rule Effective for 47 CFR 1.902(d)(8), 1.9035(d)(4), 20.18(a), and 20.18(r).	02/12/18	
2nd FNPRM .....	08/13/21	86 FR 44681
2nd R&O .....	08/13/21	86 FR 44635
2nd FNPRM Comment Period End.	09/13/21	
Final Rules Effective (except for those requiring OMB approval).	09/13/21	
Reply Comment Period End.	10/12/21	
Final Rule Effective.	05/03/22	87 FR 26139
Next Action Undetermined.		

*Regulatory Flexibility Analysis*

*Required: Yes.*

*Agency Contact:* Melissa Conway, Attorney Advisor, Mobility Div., Wireless Bureau, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, *Phone:* 202 418–2887, *Email:* [melissa.conway@fcc.gov](mailto:melissa.conway@fcc.gov), *RIN:* 3060–AK06

**556. Promoting Investment in the 3550–3700 MHz Band; GN Docket No. 17–258 [3060–AK12]**

*Legal Authority:* 47 U.S.C. 151 and 152; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 302(a); 47 U.S.C. 303 and 304; 47 U.S.C. 307(e); 47 U.S.C. 316

*Abstract:* The Report and Order and Second Further Notice of Proposed Rulemaking (NPRM) adopted by the Commission established a new Citizens Broadband Radio Service for shared wireless broadband use of the 3550 to 3700 MHz band. The Citizens Broadband Radio Service is governed by a three-tiered spectrum authorization framework to accommodate a variety of commercial uses on a shared basis with incumbent Federal and non-Federal users of the band. Access and operations will be managed by a dynamic spectrum access system. The three tiers are: Incumbent Access, Priority Access, and General Authorized Access. Rules governing the Citizens Broadband Radio Service are found in part 96 of the Commission's rules.

The Order on Reconsideration and Second Report and Order addressed several Petitions for Reconsideration

submitted in response to the Report and Order and resolved the outstanding issues raised in the Second Further Notice of Proposed Rulemaking.

The 2017 NPRM sought comment on limited changes to the rules governing Priority Access Licenses in the band, adjacent channel emissions limits, and public release of base station registration information.

The 2018 Report and Order addressed the issues raised in the 2017 NPRM and implemented changes rules governing Priority Access Licenses in the band and public release of base station registration information.

On July 2020, the Commission commenced an auction of Priority Access Licenses in the band. "Winning bidders were announced on September 2, 2020".

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/08/13	78 FR 1188
NPRM Comment Period End.	03/19/13	
FNPRM .....	06/02/14	79 FR 31247
FNPRM Comment Period End.	08/15/14	
R&O and 2nd FNPRM.	06/15/15	80 FR 34119
2nd FNPRM Comment Period End.	08/14/15	
Order on Recon and 2nd R&O.	07/26/16	81 FR 49023
NPRM .....	11/28/17	82 FR 56193
NPRM Comment Period End.	01/29/18	
R&O .....	12/07/18	83 FR 6306
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Paul Powell, Assistant Chief, Mobility Division, WTB, Federal Communications Commission, Wireless Telecommunications Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-1613, *Email:* paul.powell@fcc.gov.

*RIN:* 3060-AK12

**557. Updating Part 1 Competitive Bidding Rules (WT Docket No. 14-170) [3060-AK28]**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 303(r); 47 U.S.C. 309(j); 47 U.S.C. 316

*Abstract:* This proceeding was initiated to revise some of the Commission's general part 1 rules governing competitive bidding for spectrum licenses to reflect changes in the marketplace, including the challenges faced by new entrants, as well as to advance the statutory

directive to ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services. In July 2015, the Commission revised its competitive bidding rules, specifically adopting revised requirements for eligibility for bidding credits, a new rural service provider bidding credit, a prohibition on joint bidding agreements and other changes.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/14/14	79 FR 68172
Public Notice .....	03/16/15	80 FR 15715
Public Notice .....	04/23/15	80 FR 22690
R&O .....	09/18/15	80 FR 56764
Public Notice on Petitions for Reconsideration.	11/10/15	80 FR 69630
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Kelly Quinn, Assistant Chief, Auctions and Spectrum Access Division, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, *Phone:* 202 418-0660, *Email:* kelly.quinn@fcc.gov.

*RIN:* 3060-AK28

**558. Use of Spectrum Bands Above 24 GHz for Mobile Services—Spectrum Frontiers: WT Docket 10-112 [3060-AK44]**

*Legal Authority:* 47 U.S.C. 151 to 154; 47 U.S.C. 157; 47 U.S.C. 160; 47 U.S.C. 201; 47 U.S.C. 225; 47 U.S.C. 227; 47 U.S.C. 301 and 302; 47 U.S.C. 302(a); 47 U.S.C. 303 and 304; 47 U.S.C. 307; 47 U.S.C. 309 and 310; 47 U.S.C. 316; 47 U.S.C. 319; 47 U.S.C. 332; 47 U.S.C. 336; 47 U.S.C. 1302

*Abstract:* In this proceeding, the Commission adopted service rules for licensing of mobile and other uses for millimeter wave (mmW) bands. These high frequencies previously have been best suited for satellite or fixed microwave applications; however, recent technological breakthroughs have newly enabled advanced mobile services in these bands, notably including very high speed and low latency services. This action will help facilitate Fifth Generation mobile services and other mobile services. In developing service rules for mmW bands, the Commission will facilitate access to spectrum, develop a flexible spectrum policy, and encourage wireless innovation.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/13/16	81 FR 1802
NPRM Comment Period End.	02/26/16	
FNPRM .....	08/24/16	81 FR 58269
Comment Period End.	09/30/16	
FNPRM Reply Comment Period End.	10/31/16	
R&O .....	11/14/16	81 FR 79894
R&O .....	01/02/18	83 FR 37
FNPRM .....	01/02/18	83 FR 85
FNPRM Comment Period End.	01/23/18	
R&O .....	07/20/18	83 FR 34478
FNPRM .....	07/20/18	83 FR 34520
FNPRM Comment Period End.	09/28/18	
R&O .....	02/05/19	84 FR 1618
R&O .....	05/01/19	84 FR 18405
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* John Schauble, Deputy Chief, Broadband Division, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-0797, *Email:* john.schauble@fcc.gov.

*RIN:* 3060-AK44

**559. Expanding Flexible Use of the 3.7 to 4.2 GHz Band: GN Docket No. 18-122 [3060-AK76]**

*Legal Authority:* 47 U.S.C. 151 to 153; 47 U.S.C. 154(i); 47 U.S.C. 157; 47 U.S.C. 201; 47 U.S.C. 301 to 304; 47 U.S.C. 307 to 310; 47 U.S.C. 1302; . . .

*Abstract:* In the 2020 Report and Order, the Commission adopted rules to make 280 megahertz of mid-band spectrum available for flexible use (plus a 20-megahertz guard band) throughout the contiguous United States. Pursuant to the Report and Order, existing fixed satellite service (FSS) and fixed services (FS) must relocate operations out of the lower portion of the 3.7-4.0 GHz band. The Commission will issue flexible use licenses in the 3.7-3.98 GHz portion of the band in the contiguous United States via a system of competitive bidding. The Commission established rules to govern the transition including optional payments for satellite operators that choose to relocate on an accelerated schedule and provide reimbursement to FSS operators and their associated earth stations for reasonable expenses incurred to facilitate the transition. The Report and Order also established service and technical rules for the new flexible use licenses that will be issued in the 3.7-3.98 GHz portion of the band. "On December 8, 2020, the Commission began an auction of licenses in the 3.7-3.98 GHz portion of the band. the

winning bidders were announced on February 24, 2021”.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/29/18	83 FR 44128
NPRM Comment Period End.	11/27/18	
Public Notice .....	05/20/19	84 FR 22733
Certifications and Data Filing Deadline.	05/28/19	
Public Notice .....	06/03/19	84 FR 22514
Public Notice Comment Period End.	07/03/19	
Public Notice Reply Comment Period End.	07/18/19	
R&O .....	04/23/20	85 FR 22804
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Paul Powell, Assistant Chief, Mobility Division, WTB, Federal Communications Commission, Wireless Telecommunications Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1613, *Email:* paul.powell@fcc.gov.

*RIN:* 3060–AK76

**560. Amendment of the Commission's Rules To Promote Aviation Safety: WT Docket No. 19–140 [3060–AK92]**

*Legal Authority:* 47 U.S.C. 154; 47 U.S.C. 303; 307(e)

*Abstract:* The Federal Communications Commission regulates the Aviation Radio Service, a family of services using dedicated spectrum to enhance the safety of aircraft in flight, facilitate the efficient movement of aircraft both in the air and on the ground, and otherwise ensure the reliability and effectiveness of aviation communications. Recent technological advances have prompted the Commission to open this new rulemaking proceeding to ensure the timely deployment and use of today's state-of-the-art safety-enhancing technologies. With this Notice of Proposed Rulemaking, the Commission proposes changes to its part 87 Aviation Radio Service rules to support the deployment of more advanced avionics technology, increase the efficient use of limited spectrum resources, and generally improve aviation safety.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/02/19	84 FR 31542
NPRM Comment Period End.	09/03/19	

Action	Date	FR Cite
NPRM Reply Comment Period End.	09/30/19	
Next Action Undetermined.		

*Regulatory Flexibility Analysis*

*Required: Yes.*

*Agency Contact:* Jeff Tobias, Attorney Advisor, Federal Communications Commission, Wireless Telecommunications Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1617, *Email:* jeff.tobias@fcc.gov.

*RIN:* 3060–AK92

**561. Implementation of State and Local Governments' Obligation To Approve Certain Wireless Facility Modification Requests Under Section 6409(a) of the Spectrum Act of 2012 (WT Docket No. 19–250) [3060–AL29]**

*Legal Authority:* 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461, unless otherwise noted.

*Abstract:* In this proceeding, the Commission seeks to reduce regulatory barriers to wireless infrastructure deployment by further streamlining the state and local government review process for modifications to existing wireless infrastructure under section 6409(a) of the Spectrum Act of 2012.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/02/20	85 FR 39859
Declaratory Ruling	07/27/20	85 FR 45126
NPRM Comment Period End.	08/03/20	
R&O .....	12/03/20	85 FR 78005
Petition for Recon	03/03/21	86 FR 12898
Next Action Undetermined.		

*Regulatory Flexibility Analysis*

*Required: Yes.*

*Agency Contact:* Georgios Leris, Federal Communications Commission, Wireless Telecommunications Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1994, *Email:* georgios.leris@fcc.gov.

*RIN:* 3060–AL29

**562. Expanding Flexible Use of the 12.2–12.7 GHz Band, et al., WT Docket No. 20–443, et al. [3060–AL40]**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 152; 47 U.S.C. 153; 47 U.S.C. 154; 47 U.S.C. 155; 47 U.S.C. 157; 47 U.S.C. 301; 47 U.S.C. 302; 47 U.S.C. 303; 47 U.S.C. 304; 47 U.S.C. 307; 47 U.S.C. 309; 47 U.S.C. 310; 47 U.S.C. 316

*Abstract:* The Commission seeks input on feasibility of allowing mobile

services in the 12.2–12.7 GHz band while protecting incumbents from harmful interference.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/08/21	86 FR 13266
NPRM Comment Period End.	04/07/21	
NPRM Reply Comment Period End.	05/07/21	
NPRM .....	04/16/21	86 FR 20111
NPRM Extension Comment Period End.	05/07/21	
NPRM Extension Reply Comment Period End.	06/07/21	
NPRM Denial of Further Extension of Deadlines for Filing Comments and Reply Comments.	05/27/21	86 FR 28520
NPRM .....	06/22/21	86 FR 32669
NPRM Extension Reply Comment Period.	07/07/21	
Next Action Undetermined.		

*Regulatory Flexibility Analysis*

*Required: Yes.*

*Agency Contact:* Madelaine Major, Assistant Division Chief, Broadband Div., WTB, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1466, *Email:* madelaine.major@fcc.gov.

*RIN:* 3060–AL40

**FEDERAL COMMUNICATIONS COMMISSION (FCC)**

*Wireline Competition Bureau*

*Long-Term Actions*

**563. Local Telephone Networks That LECs Must Make Available to Competitors [3060–AH44]**

*Legal Authority:* 47 U.S.C. 251

*Abstract:* The Commission adopted rules applicable to incumbent local exchange carriers (LECs) to permit competitive carriers to access portions of the incumbent LECs' networks on an unbundled basis. Unbundling allows competitors to lease portions of the incumbent LECs' network to provide telecommunications services. These rules, adopted in dockets CC 96–98, WC 01–338, and WC 04–313, are intended to accelerate the development of local exchange competition.

*Timetable:*

Action	Date	FR Cite
Second FNPRM	04/26/99	64 FR 20238
Fourth FNPRM ....	01/14/00	65 FR 2367
Errata Third R&O and Fourth FNPRM.	01/18/00	65 FR 2542
Second Errata Third R&O and Fourth FNPRM.	01/18/00	65 FR 2542
Supplemental Order.	01/18/00	65 FR 2542
Third R&O .....	01/18/00	65 FR 2542
Correction .....	04/11/00	65 FR 19334
Supplemental Order Clarification.	06/20/00	65 FR 38214
Public Notice .....	02/01/01	66 FR 8555
Public Notice .....	03/05/01	66 FR 18279
Public Notice .....	04/10/01	
Public Notice .....	04/23/01	
Public Notice .....	05/14/01	
NPRM .....	01/15/02	67 FR 1947
Public Notice .....	05/29/02	
Public Notice .....	08/01/02	
Public Notice .....	08/13/02	
NPRM .....	08/21/03	68 FR 52276
R&O and Order on Remand.	08/21/03	68 FR 52276
Errata .....	09/17/03	
Report .....	10/09/03	68 FR 60391
Order .....	10/28/03	
Order .....	01/09/04	
Public Notice .....	01/09/04	
Public Notice .....	02/18/04	
Order .....	07/08/04	
Second R&O .....	07/08/04	69 FR 43762
Order on Recon ..	08/09/04	69 FR 54589
Interim Order .....	08/20/04	69 FR 55111
NPRM .....	08/20/04	69 FR 55128
Public Notice .....	09/10/04	
Public Notice .....	09/13/04	
Public Notice .....	10/20/04	
Order on Recon ..	12/29/04	69 FR 77950
Order on Remand	02/04/04	
Public Notice .....	04/25/05	70 FR 29313
Public Notice .....	05/25/05	70 FR 34765
Declaratory Ruling	05/26/11	
NPRM .....	01/06/20	85 FR 472
NPRM Comment Period End.	03/06/20	
Report & Order ...	01/08/21	86 FR 1636
Next Action Undetermined.	To Be Determined	

*Regulatory Flexibility Analysis*

Required: Yes.

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RIN: 3060-AH44

**564. Jurisdictional Separations [3060-AJ06]**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i) and 154(j); 47 U.S.C. 205; 47 U.S.C. 221(c); 47 U.S.C. 254; 47 U.S.C. 403; 47 U.S.C. 410

*Abstract:* Jurisdictional separations is the process, pursuant to part 36 of the Commission's rules, by which incumbent local exchange carriers apportion regulated costs between the intrastate and interstate jurisdictions. In 1997, the Commission initiated a proceeding seeking comment on the extent to which legislative changes, technological changes, and marketplace changes warrant comprehensive reform of the separations process. In 2001, the Commission adopted the Federal-State Joint Board on Jurisdictional Separations' Joint Board's recommendation to impose an interim freeze on the part 36 category relationships and jurisdictional cost allocation factors for a period of 5 years, pending comprehensive reform of the part 36 separations rules. In 2006, the Commission issued an Order and Further Notice of Proposed Rulemaking that extended the separations freeze for a period of 3 years and sought comment on comprehensive reform. In 2009, the Commission issued a Report and Order extending the separations freeze an additional year to June 2010. In 2010, the Commission issued a Report and Order extending the separations freeze for an additional year to June 2011. In 2011, the Commission adopted a Report and Order extending the separations freeze for an additional year to June 2012. In 2012, the Commission issued a Report and Order extending the separations freeze for an additional 2 years to June 2014. In 2014, the Commission issued a Report and Order extending the separations freeze for an additional 3 years to June 2017.

In 2016, the Commission issued a Report and Order extending the separations freeze for an additional 18 months until January 1, 2018. In 2017, the Joint Board issued a Recommended Decision recommending changes to the part 36 rules designed to harmonize them with the Commission's previous amendments to its part 32 accounting rules. In February 2018, the Commission issued a Notice of Proposed Rulemaking proposing amendments to part 36 consistent with the Joint Board's recommendations. In October 2018, the Commission issued a Report and Order adopting each of the Joint Board's recommendations and amending the Part 36 consistent with those recommendations. In July 2018, the Commission issued a Notice of Proposed Rulemaking proposing to extend the separations freeze for an additional 15 years and to provide rate-of-return carriers that had elected to freeze their category relationships a time limited opportunity to opt out of that

freeze. In December 2018, the Commission issued a Report and Order extending the freeze for up to 6 years until December 31, 2024, and granting rate-of-return carriers that had elected to freeze their category relationships a one-time opportunity to opt out of that freeze.

On March 31, 2020, the United States Court of Appeals for the District of Columbia Circuit affirmed the Commission's December 2018 Report and Order.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/05/97	62 FR 59842
NPRM Comment Period End.	12/10/97	
Order .....	06/21/01	66 FR 33202
Order and FNPRM.	05/26/06	71 FR 29882
Order and FNPRM Comment Period End.	08/22/06	
R&O .....	05/15/09	74 FR 23955
R&O .....	05/25/10	75 FR 30301
R&O .....	05/27/11	76 FR 30840
R&O .....	05/23/12	77 FR 30410
R&O .....	06/13/14	79 FR 36232
R&O .....	06/02/17	82 FR 25535
Recommended Decision.	10/27/17	
NPRM .....	03/13/18	83 FR 10817
NPRM Comment Period End.	04/27/18	
NPRM .....	07/27/18	83 FR 35589
NPRM Comment Period End.	09/10/18	
R&O .....	12/11/18	83 FR 63581
R&O .....	02/15/19	84 FR 4351
Announcement of OMB Approval.	03/01/19	84 FR 6977
Next Action Undetermined.		

*Regulatory Flexibility Analysis*

Required: Yes.

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RIN: 3060-AJ06

**565. Rates for Inmate Calling Services; WC Docket No. 12-375 [3060-AK08]**

*Legal Authority:* 47 U.S.C. 151 and 152; 47 U.S.C. 154(i) and (j); 47 U.S.C. 201(b); 47 U.S.C. 218; 47 U.S.C. 220; 47 U.S.C. 276; 47 U.S.C. 403; 47 CFR 64

*Abstract:* In the Second Report and Order, the Federal Communications Commission adopted rule changes to ensure that rates for both interstate and intrastate inmate calling services (ICS) are fair, just, and reasonable limits on ancillary service charges imposed by

ICS providers. In the Second Report and Order, the Commission set caps on all interstate and intrastate calling rates for ICS, established a tiered rate structure based on the size and type of facility being served, limited the types of ancillary services that ICS providers may charge for and capped the charges for permitted fees, banned flat-rate calling, facilitated access to ICS by people with disabilities by requiring providers to offer free or steeply discounted rates for calls using TTY, and imposed reporting and certification requirements to facilitate continued oversight of the ICS market. In the Third Further Notice portion of the item, the Commission sought comment on ways to promote competition for ICS, video visitation, and rates for international calls, and considered an array of solutions to further address areas of concern in the ICS industry. In an Order on Reconsideration, the Commission amended its rate caps and the definition of “mandatory tax or mandatory fee.”

On June 13, 2017, the D.C. Circuit vacated the rate caps adopted in the Second Report and Order, as well as reporting requirements related to video visitation. The court held that the Commission lacked jurisdiction over intrastate ICS calls and that the rate caps the Commission adopted for interstate calls were arbitrary and capricious. The court also remanded the Commission’s caps on ancillary fees. On September 26, 2017, the court denied a petition for rehearing en banc. On December 21, 2017, the court issued two separate orders: one vacating the 2016 Order on Reconsideration insofar as it purports to set rate caps on inmate calling services, and one dismissing as moot challenges to the Commission’s First Report and Order on ICS.

On February 4, 2020, the Commission’s Wireline Competition Bureau released a Public Notice seeking to refresh the record on ancillary service charges imposed in connection with inmate calling services.

On August 6, 2020, the Commission adopted a Report and Order on Remand and a Fourth Further Notice of Proposed Rulemaking responding to remands by the U.S. Court of Appeals for the District of Columbia Circuit and proposing to comprehensively reform rates and charges for the inmate calling services within the Commission’s jurisdiction. The Report and Order on Remand found that the Commission’s five permitted ancillary service charges (1) automated payment fees; (2) fees for single-call and related services; (3) live agent fees; (4) paper bill/statement fees; and (5) third-party financial transaction fees generally, cannot be practically

segregated between interstate and intrastate inmate telephone calls, except in a limited number of cases. Accordingly, the Commission prohibited inmate calling services providers from imposing ancillary service fees higher than the Commission’s caps, or imposing fees for additional ancillary services unless imposed in connection with purely intrastate inmate telephone service calls. The Order also reinstated a rule prohibiting providers from marking up third-party fees for single-call services; reinstated rule language that prohibits providers from marking up mandatory taxes or fees that they pass on to inmate telephone service consumers; and amended certain of the inmate calling services rules consistent with the D.C. Circuit’s mandates to reflect that the Commission’s rate and fee caps on inmate calling service apply only to interstate and international inmate calling. The Fourth FNPRM proposes to substantially reduce the interstate rate cap for inmate telephone calls from the current interim rate caps of \$0.21 per minute for debit or prepaid calls and \$0.25 per minute for collect calls for all types of correctional facilities, to permanent rate caps of \$0.14 per minute for all interstate calls from prisons and \$0.16 for all interstate calls from jails. The Fourth FNPRM also proposes to adopt rate caps for international inmate calling services calls for the first time based on the proposed interstate rate caps, plus the amount that the provider must pay its underlying international service provider for an international call. It also proposes a waiver process for providers that believe the Commission’s rate caps would not allow them to recover their costs of serving a particular facility or contract. Finally, it seeks comment on a further mandatory data collection to continue efforts to reform these rates and fees.

On November 23, 2020, Global Tel\*Link Corporation filed a petition for reconsideration of the August 6, 2020 Order on Remand. On December 3, 2020, the Commission established the opposition and reply comment dates for the petition.

On May 24, 2021 the Commission released the Third Report and Order, Order on Reconsideration and Fifth Further Notice of Proposed Rulemaking. In the Third Report and Order, the Commission: (1) substantially reduced the interim rate caps for interstate inmate calling services from prisons and larger jails (those with 1,000 or more incarcerated people) from \$0.21 per minute for debit and prepaid calls and \$0.25 per minute for collect calls to new uniform interim interstate caps of \$0.12

per minute for prisons and \$0.14 per minute for larger jails; (2) maintained the current interim interstate rate cap of \$0.21 for jails with less than 1,000 incarcerated people because of insufficient record evidence to determine providers’ costs of serving those facilities at this time; (3) eliminated separate treatment of collect calls, resulting in a uniform interim interstate rate cap for all types of calls at each facility, as proposed; (4) reformed the treatment of site commission payments by specifying that providers may pass through to consumers (without any markup) site commission payments that are mandated by federal, state, or local law and that providers may pass through to consumers no more than \$ 0.02 per minute site commission payments resulting from contractual obligations negotiated between providers and correctional officials; (5) capped, for the first time, international calling rates at all facilities at the applicable facility’s total interstate rate cap, plus the amount the inmate calling services provider pays to its underlying wholesale carriers for completing international calls; (6) reformed the ancillary service charge caps for third-party financial transaction fees, including those related to calls that are billed on a per-call basis; and (7) adopted a new mandatory data collection to obtain more uniform cost data based on consistent, prescribed allocation methodologies to determine just and reasonable, permanent, interstate and international cost-based rates for facilities of all sizes.

In the Order on Reconsideration, the Commission denied GTL’s petition seeking reconsideration of a single sentence from the 2020 Remand Order, in which the Commission reminded providers that the jurisdictional nature of a call, that is whether it is interstate or intrastate, depends on the physical location of the endpoints of the call and not on whether the area code or NXX prefix of the telephone number associated with the account are associated with a particular state. The Commission determined that the end-to-end analysis has been, and remains, the generally applicable test for all telecommunications carriers in determining the jurisdiction of their calls and the Commission continues to use the traditional end-to-end jurisdictional analysis in setting rates for calls placed by inmate calling services consumers.

In the Fifth Further Notice, the Commission proposed to amend the Commission’s rules to require calling service providers to provide access to all forms of Telecommunications Relay



Services, including internet-based services, to facilitate greater accessibility for incarcerated people with hearing and speech disabilities. The Commission also sought comment on: (1) the methodology the Commission should use to set permanent per-minute rate caps for interstate and international inmate calling services; (2) site commission costs for facilities of all sizes and site commission reform generally; (3) the costs of providing services to jails with average daily populations of fewer than 1,000 incarcerated people; (4) whether and how the Commission should reform the ancillary service charge caps and how the Commission can curtail potentially abusive practices related to these charges; (5) whether to institute a recurring periodic data collection; and (6) whether some providers have market power in the bidding process, thereby impacting the competitiveness of the bidding process.

On September 22, 2021, WCB and OEA (collectively, WCB/OEA) issued a Public Notice seeking comment on the contours and specific requirements of the Third Mandatory Data Collection, including proposed instructions and a proposed template for that collection. In issuing this Public Notice, WCB/OEA were acting pursuant to the Commission's directive, in the *2021 ICS Order*, that the new data collection obtain data on providers' operations, costs, demand, and revenues, among other information. As the Commission explained in that order, the collected information will allow the Commission to set permanent interstate and international inmate calling services rate caps and to evaluate and, if warranted, revise the current ancillary service charge caps.

On December 15, 2021, WCB/OEA issued a Public Notice seeking comment on revised requirements for ICS Annual Reports, including proposed instructions, templates, and a provider certification. Specifically, the Public Notice proposed changes in the reporting requirements to align them with ICS rule changes adopted in the *2021 ICS Order*.

On January 18, 2022, WCB adopted an Order implementing the Third Mandatory Data Collection and adopted accompanying instructions, reporting templates, and a certification form. The collected information will allow the Commission to set permanent interstate and international inmate calling services rate caps and to evaluate and, if warranted, revise the current ancillary service charge caps. On February 9, 2022, WCB released a public notice announcing that the providers'

mandatory data collection responses will be due no later than June 30, 2022.

On June 24, 2022, WCB adopted an Order implementing revisions to its annual reporting requirements, including accompanying instructions, reporting templates, and a certification form. The revisions were consistent with changes made in the Third Report and Order.

On September 30, 2022, the Commission released the Fourth Report and Order, and Sixth Further Notice of Proposed Rulemaking. The Report and Order required inmate calling services providers to provide access to all relay services eligible for Telecommunications Relay Services fund support in any correctional facility that is located where broadband is available and is part of a correctional system with 50 or more incarcerated people. This included the ability to place point-to-point video calls using American Sign Language (ASL). The rules also restricted provider charges for relay services and point-to-point video calls. More generally, the rules reduced certain charges and curtail abusive practices related to inmate calling services to ease the financial burdens on all incarcerated people and their families. To ensure that the rates, terms, and practices related to interstate and international inmate calling services are just and reasonable, the Order prohibited providers from taking control of funds in inactive calling accounts until at least 180 calendar days of continuous inactivity has passed, after which providers would be required to refund the balance or dispose of the funds in accordance with applicable state law. The Order also lowered the current ancillary fee caps on charges for single call services, and lowered the cap on provider charges for processing credit card, debit card, and other payments to calling services accounts. Finally, the Commission revised the definitions of "Prison" and "Jail" in its rules to conform the wording of those rules with the Commission's intent in adopting them in 2015.

In the Sixth Further Notice, sought additional comment on whether to allow enterprise registration for internet Protocol Captioned Telephone Service (IP CTS) in carceral settings and how to address the special circumstances faced by some inmate calling services providers in jurisdictions with average daily populations of fewer than 50 incarcerated persons. This Notice sought comment on refining the rules adopted in the Fifth Report and Order concerning the treatment of balances in inactive accounts. It also comment on expanding the breadth and scope of the

Commission's consumer disclosure requirements. The Commission also comment on how it should use the data filed in response to the Third Mandatory Data Collection to establish just and reasonable permanent caps on interstate and international rates and associated ancillary service charges consistent with the statute. The Commission invited further comment on allowing inmate calling services providers to offer pilot programs allowing consumers to purchase calling services under alternative pricing structures.

#### Timetable:

Action	Date	FR Cite
NPRM .....	01/22/13	78 FR 4369
FNPRM .....	11/13/13	78 FR 68005
R&O .....	11/13/13	78 FR 67956
FNPRM Comment Period End.	12/20/13	
2nd FNPRM .....	11/21/14	79 FR 69682
2nd FNPRM Comment Period End.	01/15/15	
2nd FNPRM Reply Comment Period End.	01/20/15	
3rd FNPRM .....	12/18/15	80 FR 79020
2nd R&O .....	12/18/15	80 FR 79136
3rd FNPRM Comment Period End.	01/19/16	
3rd FNPRM Reply Comment Period End.	02/08/16	
Order on Reconsideration.	09/12/16	81 FR 62818
Announcement of OMB Approval.	03/01/17	82 FR 12182
Correction to Announcement of OMB Approval.	03/08/17	82 FR 12922
Announcement of OMB Approval.	02/06/20	85 FR 6947
Public Notice .....	02/19/20	85 FR 9444
Public Notice Comment Period End.	03/20/20	
Public Notice Reply Comment Period End.	04/06/20	
Letter .....	07/15/20	
R&O on Remand & 4th FNPRM.	08/06/20	85 FR 67450; 85 FR 67480; 85 FR 73233
Order .....	09/01/20	
Public Notice .....	09/24/20	85 FR 66512
Public Notice .....	10/23/20	
Letter .....	11/13/20	
Public Notice .....	12/03/20	85 FR 83000
Order Extending Reply Comment Deadline.	12/17/20	
Public Notice .....	01/08/21	
Comment Period End on 12/3/2020, Public Notice End.	01/11/21	



Action	Date	FR Cite
Comment Period End on 12/3/ 2020, Public Notice End.	01/21/21	
Public Notice .....	03/03/21	
5th FNPRM .....	07/28/21	86 FR 40416
3rd R&O .....	07/28/21	86 FR 40682
3rd R&O .....	07/28/21	86 FR 40340
Order .....	08/10/21	86 FR 48952
Public Notice (MDC).	09/22/21	86 FR 54897
5th NPRM Com- ment Period End.	09/27/21	
Order Extending Reply Comment Deadline.	10/15/21	86 FR 60438
5th NPRM Reply Comment Pe- riod End.	10/27/21	
Comment Period End on 09/22/ 2021, Public Notice End.	11/04/21	
Reply Comment Period on 09/ 22/2021, Public Notice End.	11/19/21	
5th NPRM Reply Comment Pe- riod End.	12/17/21	
Public Notice on Annual Reports.	01/04/22	87 FR 212
Comment Period End on 01/04/ 2022, Public Notice End.	01/12/22	
Reply Period on 01/04/2022, Public Notice End.	01/27/22	
Order Adopting MDC.	03/22/22	87 FR 16560
Order Adopting Annual Reports Revisions.	08/02/22	87 FR 47103
4th R&O .....	09/30/22	
6th FNPRM .....	09/30/22	
Next Action Unde- termined.		

#### Regulatory Flexibility Analysis

Required: Yes.

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RIN: 3060-AK08

#### 566. Comprehensive Review of the Part 32 Uniform System of Accounts (WC Docket No. 14-130) [3060-AK20]

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 201(b); 47 U.S.C. 219 and 220

*Abstract:* The Commission initiates a rulemaking proceeding to review the Uniform System of Accounts (USOA) to consider ways to minimize the compliance burdens on incumbent local

exchange carriers while ensuring that the Agency retains access to the information it needs to fulfill its regulatory duties. In light of the Commission's actions in areas of price cap regulation, universal service reform, and intercarrier compensation reform, the Commission stated that it is likely appropriate to streamline the existing rules even though those reforms may not have eliminated the need for accounting data for some purposes. The Commission's analysis and proposals are divided into three parts. First, the Commission proposes to streamline the USOA accounting rules while preserving their existing structure. Second, the Commission seeks more focused comment on the accounting requirements needed for price cap carriers to address our statutory and regulatory obligations. Third, the Commission seeks comment on several related issues, including state requirements, rate effects, implementation, continuing property records, and legal authority.

On February 23, 2017, the Commission adopted a Report and Order that revised the part 32 USOA to substantially reduce accounting burdens for both price cap and rate-of-return carriers. First, the Order streamlines the USOA for all carriers. In addition, the USOA will be aligned more closely with generally accepted accounting principles, or GAAP. Second, the Order allows price cap carriers to use GAAP for all regulatory accounting purposes as long as they comply with targeted accounting rules, which are designed to mitigate any impact on pole attachment rates. Alternatively, price cap carriers can elect to use GAAP accounting for all purposes other than those associated with pole attachment rates and continue to use the part 32 accounts for pole attachment rates for up to 12 years. Third, the Order addresses several miscellaneous issues, including referral to the Federal-State Joint Board on Separations the issue of examining jurisdictional separations rules in light of the reforms adopted to part 32.

#### Timetable:

Action	Date	FR Cite
NPRM .....	09/15/14	79 FR 54942
NPRM Comment Period End.	11/14/14	
NPRM Reply Comment Pe- riod End.	12/15/14	
R&O .....	04/04/17	82 FR 20833
Next Action Unde- termined.		

*Regulatory Flexibility Analysis*  
Required: Yes.

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RIN: 3060-AK20

#### 567. Restoring Internet Freedom (WC Docket No. 17-108); Protecting and Promoting the Open Internet (GN Docket No. 14-28) [3060-AK21]

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i) and (j); 47 U.S.C. 201(b)

*Abstract:* In December 2017, the Commission adopted the Restoring Internet Freedom Declaratory Ruling, Report and Order, and Order (Restoring Internet Freedom Order), which reclassified broadband internet access service as an information service; reinstates the determination that mobile broadband internet access service is not a commercial mobile service and as a private mobile service; finds that transparency, internet Service Providers (ISPs) economic incentives, and antitrust and consumer protection laws will protect the openness of the internet, and that title II regulation is unnecessary to do so; and adopts a transparency rule similar to that in the 2010 Open Internet Order, requiring disclosure of network management practices, performance characteristics, and commercial terms of service. Additionally, the transparency rule requires ISPs to disclose any blocking, throttling, paid prioritization, or affiliate prioritization, and eliminates the internet conduct standard and the bright-line conduct rules set forth in the 2015 Open Internet Order.

#### Timetable:

Action	Date	FR Cite
NPRM .....	07/01/14	79 FR 37448
NPRM Comment Period End.	07/18/14	
NPRM Reply Comment Pe- riod End.	09/15/14	
R&O on Remand, Declaratory Rul- ing, and Order.	04/13/15	80 FR 19737
NPRM .....	06/02/17	82 FR 25568
NPRM Comment Period End.	07/03/17	
Declaratory Rul- ing, R&O, and Order.	02/22/18	83 FR 7852
Order on Remand Next Action Unde- termined.	01/07/21	86 FR 994

*Regulatory Flexibility Analysis*  
Required: Yes.

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*RIN:* 3060-AK21

**568. Technology Transitions; GN Docket No. 13-5, WC Docket No. 05-25; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; WC Docket No. 17-84 [3060-AK32]**

*Legal Authority:* 47 U.S.C. 214; 47 U.S.C. 251

*Abstract:* On April 20, 2017, the Commission adopted a Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment (Wireline Infrastructure NPRM, NOI, and RFC) seeking input on a number of actions designed to accelerate: (1) the deployment of next-generation networks and services by removing barriers to infrastructure investment at the Federal, State, and local level; (2) the transition from legacy copper networks and services to next-generation fiber-based networks and services; and (3) the reduction of Commission regulations that raise costs and slow, rather than facilitate, broadband deployment.

On November 16, 2017, the Commission adopted a Report and Order (R&O), Declaratory Ruling, and Further Notice of Proposed Rulemaking (Wireline Infrastructure Order) that takes a number of actions and seeks comment on further actions designed to accelerate the deployment of next-generation networks and services through removing barriers to infrastructure investment.

The Wireline Infrastructure Order took a number of actions. First, the Report and Order revised the pole attachment rules to reduce costs for attachers, reforms the pole access complaint procedures to settle access disputes more swiftly, and increases access to infrastructure for certain types of broadband providers. Second, the Report and Order revised the section 214(a) discontinuance rules and the network change notification rules, including those applicable to copper retirements, to expedite the process for carriers seeking to replace legacy network infrastructure and legacy services with advanced broadband networks and innovative new services. Third, the Report and Order reversed a 2015 ruling that discontinuance authority is required for solely wholesale services to carrier-customers. Fourth, the Declaratory Ruling abandoned the 2014 “functional test” interpretation of when section 214

discontinuance applications are required, bringing added clarity to the section 214(a) discontinuance process for carriers and consumers alike. Finally, the Further Notice of Proposed Rulemaking sought comment on additional potential pole attachment reforms, reforms to the network change disclosure and section 214(a) discontinuance processes, and ways to facilitate rebuilding networks impacted by natural disasters. Various parties filed a Petition for Review of the Wireline Infrastructure Order in the U.S. Court of Appeals for the Ninth Circuit. The Ninth Circuit denied the Petition on January 23, 2020 on the grounds that the parties lacked standing.

On June 7, 2018, the Commission adopted a Second Report and Order (Wireline Infrastructure Second Report and Order) taking further actions designed to expedite the transition from legacy networks and services to next generation networks and advanced services that benefit the American public and to promote broadband deployment by further streamlining the section 214(a) discontinuance rules, network change disclosure processes, and part 68 customer notification process.

The Wireline Infrastructure NPRM, NOI, and RFC sought comment on additional issues not addressed in the November Wireline Infrastructure Order or the June Wireline Infrastructure Second Report and Order. It sought comment on changes to the Commission’s pole attachment rules to: (1) streamline the timeframe for gaining access to utility poles; (2) reduce charges paid by attachers for work done to make a pole ready for new attachments; and (3) establish a formula for computing the maximum pole attachment rate that may be imposed on an incumbent LEC.

The Wireline Infrastructure NPRM, NOI, and RFC also sought comment on whether the Commission should enact rules, consistent with its authority under section 253 of the Act, to promote the deployment of broadband infrastructure by preempting State and local laws that inhibit broadband deployment. It also sought comment on whether there are State laws governing the maintenance or retirement of copper facilities that serve as a barrier to deploying next-generation technologies and services that the Commission might seek to preempt.

Previously, in November 2014, the Commission adopted a Notice of Proposed Rulemaking and Declaratory Ruling that: (1) proposed new backup power rules; (2) proposed new or revised rules for copper retirements and

service discontinuances; and (3) adopted a functional test in determining what constitutes a service for purposes of section 214(a) discontinuance review. In August 2015, the Commission adopted a Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking that: (i) lengthened and revised the copper retirement process; (ii) determined that a carrier must obtain Commission approval before discontinuing a service used as a wholesale input if the carrier’s actions will discontinue service to a carrier-customer’s retail end users; (iii) adopted an interim rule requiring incumbent LECs that seek to discontinue certain TDM-based wholesale services to commit to certain rates, terms, and conditions; (iv) proposed further revisions to the copper retirement discontinuance process; and (v) upheld the November 2014 Declaratory Ruling. In July 2016, the Commission adopted a Second Report and Order, Declaratory Ruling, and Order on Reconsideration that: (i) adopted a new test for obtaining streamlined treatment when carriers seek Commission authorization to discontinue legacy services in favor of services based on newer technologies; (ii) set forth consumer education requirements for carriers seeking to discontinue legacy services in favor of services based on newer technologies; (iii) allowed notice to customers of discontinuance applications by email; (iv) required carriers to provide notice of discontinuance applications to Tribal entities; (v) made a technical rule change to create a new title for copper retirement notices and certifications; and (vi) harmonized the timeline for competitive LEC discontinuances caused by incumbent LEC network changes.

On August 2, 2018, the Commission adopted a Third Report and Order and Declaratory Ruling (Wireline Infrastructure Third Report and Order) establishing a new framework for the vast majority of pole attachments governed by Federal law by instituting a one-touch make-ready regime, in which a new attacher may elect to perform all simple work to prepare a pole for new wireline attachments in the communications space. This new framework includes safeguards to promote coordination among parties and ensures that new attachers perform work safely and reliably. The Commission retained its multi-party pole attachment process for attachments that are complex or above the communications space of a pole, but made significant modifications to speed

deployment, promote accurate billing, expand the use of self-help for new attachers when attachment deadlines are missed, and reduce the likelihood of coordination failures that lead to unwarranted delays. The Commission also improved its pole attachment rules by codifying and redefining Commission precedent that requires utilities to allow attachers to overlash existing wires, thus maximizing the usable space on the pole; eliminating outdated disparities between the pole attachment rates that incumbent carriers must pay compared to other similarly-situated cable and telecommunications attachers; and clarifying that the Commission will preempt, on an expedited case-by-case basis, State and local laws that inhibit the rebuilding or restoration of broadband infrastructure after a disaster. The Commission also adopted a Declaratory Ruling that interpreted section 253(a) of the Communications Act to prohibit State and local express and *de facto* moratoria on the deployment of telecommunications services or facilities and directed the Wireline Competition and Wireless Telecommunications Bureaus to act promptly on petitions challenging specific alleged moratoria. Numerous parties filed appeals of the Wireline Infrastructure Third Report and Order, and the appeals were consolidated in the U.S. Court of Appeals of the Ninth Circuit. On August 12, 2020, the Ninth Circuit issued an opinion upholding the Wireline Infrastructure Third Report and Order in all respects.

On August 8, 2018, Public Knowledge filed a Petition for Reconsideration of the Second Report and Order and Motion to Hold in Abeyance. On October 20, 2020, the Wireline Competition Bureau (Bureau) adopted a Declaratory Ruling, Order on Reconsideration, and Order. In the Declaratory Ruling, the Bureau clarified that any carrier seeking to discontinue legacy voice service to a community or part of a community that is the last retail provider of such legacy TDM service to that community or part of the community is subject to the Commission's technology transition discontinuance rules, including the requirements to receive streamlined treatment of its discontinuance application. In the Order on Reconsideration, the Bureau denied the Public Knowledge Petition for Reconsideration because all of Public Knowledge's arguments were fully considered, and rejected, by the Commission in the underlying proceeding. It also dismissed as moot

the accompanying motion to have the Commission hold that *Order* in abeyance pending the outcome of the appeal that the Ninth Circuit ultimately denied.

In September 2019, CTIA filed a Petition for Declaratory Ruling seeking clarification of certain issues raised in the 2018 Third Report and Order. On July 29, 2020, the Wireline Competition Bureau issued a Declaratory Ruling clarifying that (1) the imposition of a blanket ban by a utility on attachments to any portion of a utility pole is inconsistent with the federal requirement that a denial of access . . . be specific to a particular request; and (2) while utilities and attachers have the flexibility to negotiate terms in their pole attachment agreements that differ from the requirements in the Commission's rules, a utility cannot use its significant negotiating leverage to require an attacher to give up rights to which the attacher is entitled under the rules without the attacher obtaining a corresponding benefit.

On July 20, 2020, the Wireline Competition Bureau issued a Public Notice seeking comment on a Petition for Declaratory Ruling filed on July 16, 2020 by NCTA The internet & Television Association. NCTA asked the Commission to declare that: (1) pole owners must share in the cost of pole replacements in unserved areas pursuant to section 224 of the Communications Act, section 1.1408(b) of the Commission's rules, and Commission precedent; (2) pole attachment complaints arising in unserved areas should be prioritized through placement on the Accelerated Docket under section 1.736 of the Commission's rules; and (3) section 1.1407(b) of the Commission's rules authorizes the Commission to order any pole owner to complete a pole replacement within a specified period of time or designate an authorized contractor to do so. Comments on the NCTA Petition were due by September 2, 2020, and reply comments by September 17, 2020.

On July 23, 2021, the Wireline Competition Bureau issued a Public Notice seeking comment on a Petition for Declaratory Ruling filed by the Edison Electric Institute asking the Commission to declare that: (1) when the Commission determines that a pole attachment rate, term, or condition is unjust and unreasonable and orders a refund pursuant to section 1.1407(a)(3) of the Commission's rules, the applicable statute of limitations is the same as the two-year period prescribed by section 415(b) of the Act; and (2) refunds in pole attachment complaint

proceedings are not appropriate for any period preceding good-faith notice of a dispute. Deadlines for filing comments and reply comments were set for August 23, 2021, and September 10, 2021, respectively.

#### Timetable:

Action	Date	FR Cite
NPRM .....	01/06/15	80 FR 450
NPRM Comment Period End.	02/05/15	
NPRM Reply Comment Period End.	03/09/15	
FNPRM .....	09/25/15	80 FR 57768
R&O .....	09/25/15	80 FR 57768
FNPRM Comment Period End.	10/26/15	
FNPRM Reply Comment Period End.	11/24/15	
2nd R&O .....	09/12/16	81 FR 62632
NPRM .....	05/16/17	82 FR 224533
NPRM Comment Period End.	06/15/17	
NPRM Reply Comment Period End.	07/17/17	
R&O .....	12/28/17	82 FR 61520
FNPRM Comment Period End.	01/17/18	
FNPRM Reply Comment Period End.	02/16/18	
2nd R&O .....	07/09/18	83 FR 31659
3rd R&O .....	09/14/18	83 FR 46812
NCTA Public Notice.	07/20/20	
CTIA Declaratory Ruling.	07/29/20	
Order on Reconsideration.	02/02/21	86 FR 8872
EEL Public Notice	07/23/21	
EEL Public Notice Comment Period End.	08/23/21	
EEL Public Notice Reply Comment Period End.	09/10/21	
Next Action Undetermined.		

#### Regulatory Flexibility Analysis

Required: Yes.

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RIN: 3060-AK32

#### 569. Numbering Policies for Modern Communications, WC Docket No. 13-97 [3060-AK36]

Legal Authority: 47 U.S.C. 151; 47 U.S.C. 153 to 154; 47 U.S.C. 201 to 205; 47 U.S.C. 251; 47 U.S.C. 303(r)

Abstract: This Order establishes a process to authorize interconnected

VoIP providers to obtain North American Numbering Plan (NANP) telephone numbers directly from the numbering administrators, rather than through intermediaries. Section 52.15(g)(2)(i) of the Commission's rules limits access to telephone numbers to entities that demonstrate they are authorized to provide service in the area for which the numbers are being requested. The Commission has interpreted this rule as requiring evidence of either a State certificate of public convenience and necessity (CPCN) or a Commission license. Neither authorization is typically available in practice to interconnected VoIP providers. Thus, as a practical matter, generally only telecommunications carriers are able to provide the proof of authorization required under our rules, and thus able to obtain numbers directly from the numbering administrators. This Order establishes an authorization process to enable interconnected VoIP providers that choose direct access to request numbers directly from the numbering administrators. Next, the Order sets forth several conditions designed to minimize number exhaust and preserve the integrity of the numbering system.

The Order requires interconnected VoIP providers obtaining numbers to comply with the same requirements applicable to carriers seeking to obtain numbers. These requirements include any State requirements pursuant to numbering authority delegated to the States by the Commission, as well as industry guidelines and practices, among others. The Order also requires interconnected VoIP providers to comply with facilities readiness requirements adapted to this context, and with numbering utilization and optimization requirements. As conditions to requesting and obtaining numbers directly from the numbering administrators, interconnected VoIP providers are also required to: (1) provide the relevant State commissions with regulatory and numbering contacts when requesting numbers in those states; (2) request numbers from the numbering administrators under their own unique OCN; (3) file any requests for numbers with the relevant State commissions at least 30 days prior to requesting numbers from the numbering administrators; and (4) provide customers with the opportunity to access all abbreviated dialing codes (N11 numbers) in use in a geographic area.

The Order also modifies Commission's rules in order to permit VoIP Positioning Center (VPC) providers to obtain pseudo-Automatic Number

Identification (p-ANI) codes directly from the numbering administrators for purposes of providing E911 services.

Based on experiences and review of the direct access authorization process established by the 2015 Order, the Commission adopted a FNPRM which proposes clarifications and revisions to the Commission's rules to better ensure that interconnected VoIP providers that obtain direct access authorization to not facilitate illegal robocalls, spoofing, or fraud, pose national security risks, or evade or abuse intercarrier compensation requirements. The FNPRM proposes to require additional certifications as part of the direct access authorization applications process, that would include certification of compliance with anti-robocalling obligations. The FNPRM also proposes to clarify that applicants disclose foreign ownership information on their direct access application. It would also propose to generally refer those applications with 10% or greater foreign ownership to the Executive Branch agencies for their review, consistent with the Commission's referral of other types of applications. The FNPRM also propose to clarify that holders of a direct access authorization must update the Commission and applicable states within 30 days of changes to ownership information submitted to the Commission. The FNPRM further proposes to clarify that Commission staff retain the authority to determine when to accept filings as complete and proposes to direct Commission staff to reject an application if an applicant has engaged in behavior contrary to the public interest or has been found to originate or transmit illegal robocalls. Finally, the FNPRM seeks comment on whether to expand the direct access authorization to one-way VoIP providers or other entities that use numbering resources.

#### *Timetable:*

Action	Date	FR Cite
NPRM .....	06/19/13	78 FR 36725
NPRM Comment Period End.	07/19/13	
R&O .....	10/29/15	80 FR 66454
FNPRM (Release Date).	08/06/21	86 FR 51081
FNPRM (Comment Period End).	10/14/21	86 FR 51081
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

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*RIN:* 3060-AK36

### **570. Implementation of the Universal Service Portions of the 1996 Telecommunications Act [3060-AK57]**

*Legal Authority:* 47 U.S.C. 151 *et seq.*

*Abstract:* The Telecommunications Act of 1996 expanded the traditional goal of universal service to include increased access to both telecommunications and advanced services such as high-speed internet for all consumers at just, reasonable and affordable rates. The Act established principles for universal service that specifically focused on increasing access to evolving services for consumers living in rural and insular areas, and for consumers with low-incomes. Additional principles called for increased access to high-speed internet in the nation's schools, libraries, and rural healthcare facilities. The FCC established four programs within the Universal Service Fund to implement the statute: Connect America Fund (formally known as High-Cost Support) for rural areas; Lifeline (for low-income consumers), including initiatives to expand phone service for Native Americans; Schools and Libraries (E-rate); and Rural Healthcare.

The Universal Service Fund is paid for by contributions from telecommunications carriers, including wireline and wireless companies, and interconnected Voice over internet Protocol (VoIP) providers, including cable companies that provide voice service, based on an assessment on their interstate and international end-user revenues. The Universal Service Administrative Company, or USAC, administers the four programs and collects monies for the Universal Service Fund under the direction of the FCC.

On February 22, 2022, the Commission sought comment on further reforms to Rural Health Care Program that supports Rural Health Care providers with broadband costs and other communications services.

On May 20, 2022, the Commission considered a proposal to establish an enhanced Alternative Connect America Model (A-CAM) to achieve faster speeds in rural areas and proposes targeted modifications to the high-cost program to improve efficiency in the program.

*Timetable:*

Action	Date	FR Cite
R&O and FNPRM NPRM Comment Period End.	01/13/17 02/13/17	82 FR 4275
NPRM Reply Comment Pe- riod End.	02/27/17	
R&O and Order on Recon.	03/21/17	82 FR 14466
Order on Recon ..	05/19/17	82 FR 22901
Order on Recon ..	06/08/17	82 FR 26653
Memorandum, Opinion & Order.	06/21/17	82 FR 228224
NPRM .....	07/30/19	84 FR 36865
NPRM .....	08/21/19	84 FR 43543
R&O and Order on Recon.	11/07/19	84 FR 59937
Order on Recon ..	12/09/19	84 FR 67220
R&O .....	12/20/19	84 FR 70026
R&O .....	12/27/19	84 FR 71308
R&O .....	01/17/20	85 FR 3044
Report & Order ...	03/10/20	85 FR 13773
Report & Order ...	05/11/20	85 FR 19892
Declaratory Rul- ing/2nd FNPRM.	08/04/20	85 FR 48134
Public Notice .....	03/22/21	86 FR 15172
Report & Order on Recon.	04/09/21	86 FR 18459
R&O .....	05/28/21	86 FR 29136
2nd R&O .....	07/14/21	86 FR 37061
Public Notice .....	08/02/21	86 FR 41408
NPRM .....	10/14/21	86 FR 57097
Order .....	12/14/21	86 FR 70983
NPRM .....	01/27/22	87 FR 4182
FNPRM .....	03/15/22	87 FR 14422
NPRM .....	06/16/22	87 FR 36283
NPRM .....	06/23/22	87 FR 37459
2nd R&O .....	09/06/22	87 FR 54311
3rd R&O .....	09/06/22	87 FR 54401
Next Action Unde- termined.		

*Regulatory Flexibility Analysis**Required: Yes.*

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**571. Toll Free Assignment Modernization and Toll Free Service Access Codes: WC Docket No. 17–192, CC Docket No. 95–155 [3060–AK91]**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 201(b); 47 U.S.C. 251(e)(1)

*Abstract:* In this Report and Order (Order), the Federal Communications Commission (FCC) initiates an auction to distribute certain toll free numbers. The numbers to be auctioned will be in the new 833 toll free code for which there have been multiple, competing requests.

By using an auction, the FCC will ensure that sought-after numbers are

awarded to the parties that value them most. In addition, the FCC will reserve certain 833 numbers for distribution to government and non-profit entities that request them for public health and safety purposes. The FCC will study the results of the auction to determine how to best use the mechanism to distribute toll-free numbers equitably and efficiently in the future as well. Revenues from the auction will be used to defray the cost of toll-free numbering administration, reducing the cost of numbering for all users. The Order establishing the toll-free number auction will also authorize and accommodate the use of a secondary market for numbers awarded at auction to further distribute these numbers to the entities that value them most. The Order also adopted several definitional and technical updates to improve clarity and flexibility in toll-free number assignment.

The Commission sought comment and then adopted auctions procedures and deadlines on August 2, 2019. Bidding for the auction occurred on December 17, 2019, and Somos issued an announcement of the winning bidders on December 20, 2019. On December 16, 2019, to facilitate the preparation of its study of the auction, the Bureau charged the North American Numbering Council, via its Toll Free Access Modernization Working Group, to issue a report evaluating various aspects of the 833 Auction, and recommending improvements for any future toll free number auctions.

On January 16, 2020, Somos released all of the 833 Auction data for public review. On March 13, 2020, the Bureau invited public comment on the 833 Auction in preparation for issuing a report on the lessons learned from the Auction. Comments were due on April 13, 2020. On July 14, 2020, the North American Numbering Council approved the Toll Free Assignment Modernization Working Group's report, Perspectives on the December 2019 Auction of Numbers in the 833 Numbering Plan Area.

On January 15, 2021, the Bureau released a report that examined various aspects of this toll free number assignment experiment, including lessons learned, examination of auction outcomes, and recommendations for future toll free number assignment. The Bureau concluded that the 833 Auction was a successful experiment that provided invaluable experience and data that can facilitate further Commission efforts to continue to modernize toll free number allocation in the future.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/13/17	82 FR 47669
NPRM Comment Period End.	11/13/17	
Final Rule .....	10/23/18	83 FR 53377
Next Action Unde- termined.		

*Regulatory Flexibility Analysis**Required: Yes.*

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**572. Establishing the Digital Opportunity Data Collection; WC Docket Nos. 19–195 and 11–10 [3060–AK93]**

*Legal Authority:* 47 U.S.C. 35 to 39; 47 U.S.C. 154; 47 U.S.C. 211; 47 U.S.C. 219; 47 U.S.C. 220; 47 U.S.C. 402(b)(2)(B); Pub. L. 104–104; 47 U.S.C. 151–154; 47 U.S.C. 157; 47 U.S.C. 201; 47 U.S.C. 254; 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 309; 47 U.S.C. 319; 47 U.S.C. 332; 47 U.S.C. 641 to 646; Pub. L. 116–130; . . .

*Abstract:* In the Report and Order, the Federal Communications Commission (FCC), moving to better identify gaps in broadband coverage across the nation, initiated a new process for collecting fixed broadband data to better pinpoint where broadband service is lacking. The Report and Order concluded that there is a compelling and immediate need to develop more granular broadband deployment data to meet this goal and, accordingly, created the new Digital Opportunity Data Collection.

The Digital Opportunity Data Collection will collect geospatial broadband coverage maps from fixed broadband internet service providers of areas where they make fixed service available. This geospatial data will facilitate development of granular, high-quality fixed broadband deployment maps, which should improve the FCC's ability to target support for broadband expansion through the agency's Universal Service Fund programs. The Report and Order also adopts a process to collect public input on the accuracy of service providers' broadband maps, facilitated by a crowd-sourcing portal that will gather input from consumers as well as from state, local, and Tribal governments.

The Second Further NPRM sought comment on additional technical standards for fixed broadband providers that could ensure greater precision for the Digital Opportunity Data Collection

deployment reporting and on ways the Commission could incorporate crowdsourced and location-specific fixed broadband deployment data into this new data collection. The Second Further NPRM also sought comment on incorporating the collection of accurate, reliable mobile wireless voice and broadband coverage data into the Digital Opportunity Data Collection. In addition, the Second Further NPRM sought comment on sunseting the Form 477 broadband deployment collection following the creation of the Digital Opportunity Data Collection.

The Second Report and Order established requirements for: (1) collecting fixed broadband availability and quality of service data; (2) collecting mobile broadband deployment data, including the submission of standardized propagation maps, propagation model details, and infrastructure information; (3) establishing a common dataset of all locations in the United States where fixed broadband service can be installed; (4) verifying the accuracy of broadband availability data; (5) collecting crowdsourced data; (6) enforcing the requirements of the Broadband DATA Act; (7) creating coverage maps from the data submitted; and (8) ensuring the privacy, confidentiality, and security of information submitted by broadband providers.

The Third Further NPRM sought comment on a range of additional measures to implement the requirements of the Broadband DATA Act, including additional processes for verifying broadband availability data submitted by providers, the development of a challenge process, and FCC Form 477 reforms.

The Third Report and Order specified which fixed and mobile broadband internet access service providers are required to report broadband availability data and expanded the reporting and certification requirements for certain fixed and mobile broadband filers in order to ensure that Commission staff have the necessary tools to assess the quality and accuracy of its broadband coverage maps. The Third Report and Order also adopted standards for collecting verified broadband data from State, local, and Tribal entities and certain third parties and adopted processes for submitting challenges to fixed and mobile coverage map data and data in the location Fabric, along with processes for providers to respond to such challenges. In addition, the Third Report and Order established standards for identifying locations that will be included in the

broadband serviceable locations Fabric and for enforcement of the requirements associated with the Digital Opportunity Data Collection.

On July 16, 2021, the Wireless Telecommunications Bureau, Office of Economics and Analytics, and Office of Engineering and Technology released a Public Notice seeking comment on the technical requirements for the mobile challenge, verification, and crowdsourcing processes required under the Broadband DATA Act for the new Broadband Data Collection (formerly known as the Digital Opportunity Data Collection). Deadlines for filing comments and reply comments have been set for September 10, 2021, and September 27, 2021, respectively.

On February 22, 2022, the Task Force and OEA released a Public Notice announcing the filing deadline for the inaugural Broadband Data Collection, as required by the Commission in the July 2020 Second Report and Order.

On March 4, 2022, the Task Force and OEA published data specifications related to the biannual submission of subscription, availability, and supporting data for the Broadband Data Collection (BDC). The specifications set forth how data files required for the BDC must be formatted for submission in the BDC system, which fields the files should contain, and the data type of each field.

On March 9, 2022, the Task Force, OEA, the Wireless Telecommunications Bureau, and the Office of Engineering and Technology released the *BDC Mobile Technical Requirements Order*, which adopts technical requirements to implement the BDC mobile challenge, verification, and crowdsourcing processes. Specifically, the *Order* (1) adopts detailed processes for mobile providers to respond to challenges, for the Commission to initiate a verification request to a service provider, and for providers to respond to verification requests to confirm broadband coverage in areas they claim have service; (2) sets forth the parameters and metrics that must be collected both for on-the-ground test data to support challenge submissions, rebuttals to cognizable challenges, and responses to verification requests, and for infrastructure information to support challenge rebuttals and responses to verification requests; and (3) describes the methodology staff will use in determining when a critical mass of crowdsourced filings suggests that a provider has submitted inaccurate or incomplete data. The Task Force, OEA, and WTB also published two data specifications that provide additional detail about the technical elements of

the data to be collected as part of the mobile challenge, verification, and crowdsourcing processes. The *Data Specifications for Mobile Speed Test Data* provides information on the on-the-ground speed test data that must be collected and reported by approved third-party mobile speed test apps that consumers will use to run crowdsourcing or challenge speed tests and submit those test results to the Commission's BDC system; other entities participating in the BDC mobile challenge process or collecting crowdsourcing data; and service providers responding to mobile challenges or verification inquiries. The *Data Specifications for Provider Infrastructure Data in the Mobile Challenge and Mobile Verification Process* specifies the data files that mobile service providers must submit when they choose to respond to a mobile challenge or verification inquiry with infrastructure data.

On April 14, 2022, the Task Force and OET released a Public Notice announcing procedures for approval of third-party mobile speed test applications for use in the BDC.

Also on April 14, 2022, the Task Force, WCB, WTB, OEA, and OET released a Public Notice providing details on the procedures for state, local, and Tribal governmental entities to submit verified availability data through the BDC system.

Additionally, on April 14, 2022, the Task Force, WCB, and OEA released a Public Notice announcing that fixed broadband service providers may access a preliminary version of the Fabric to assist them in preparing their broadband availability data in preparation for the inaugural BDC filing window beginning on June 30.

On May 13, 2022, the Competitive Carriers Association (CCA) filed a Petition for Declaratory Ruling or Limited Waiver (Petition) requesting that the Commission issue a declaratory ruling or clarify that the BDC filings may be certified by a qualified professional engineer or an otherwise-qualified engineer that is not a licensed professional engineer accredited by a state licensure board. On May 17, 2022, the Task Force, WTB, WCB, and OEA released a Public Notice seeking comment on CCA's Petition. On July 8, 2022, WTB, WCB, and OEA released a Declaratory Ruling and Limited Waiver clarifying the engineering rule and issuing a limited waiver of the engineering certification requirement.

On May 31, 2022, the Task Force launched an online help center and other new resources to help internet service providers and other filers of verified broadband availability data

prepare their submissions for the inaugural BDC filing window. The new resources include video tutorials, technical assistance information, and an option to request additional assistance.

On June 15, 2022, the FCC Enforcement Bureau issued an Enforcement Advisory reminding all facilities-based broadband internet service providers of their duty to timely file complete and accurate data in the BDC by September 1, 2022.

On June 23, 2022, the Task Force, WCB, and OEA released a Public Notice announcing that the Fabric that will be used for the inaugural BDC is now available for broadband service providers and governmental entities to access.

Also on June 23, 2022, the Task Force released a Public Notice announcing early access to portions of the BDC system for filers to register in advance of the opening of the initial filing window.

On June 30, 2022, the Task Force released a Public Notice announcing the opening of the inaugural BDC filing window.

On July 1, 2022, the Task Force, WCB, and OEA released a Public Notice announcing the release of the document *Data Specifications for Bulk Fabric Challenge Data* and providing further details on which locations are considered Broadband Serviceable Locations.

On September 1, 2022, the Task Force, WCB, and OEA released a Public Notice announcing that as of September 12, 2022, state, local, and Tribal governments, service providers, and other entities can begin to file bulk challenges to data in the Fabric.

On September 15, 2022, the Task Force, WCB, and OEA issued a Public Notice announcing the release of the document *Data Specifications for Bulk Fixed Availability Challenge and Crowdsourced Data*, which provides guidance as to the requirements in the Commission's rules and orders for filing bulk challenges, as well as bulk crowdsourced information, to the fixed broadband availability data that will be published on the FCC's Broadband Maps as part of the BDC.

Also on September 15, 2022, the Task Force, WTB, OEA, and OET issued a Public Notice establishing procedures for mobile wireless broadband service providers, governmental entities, and other third parties to use their own hardware and software to submit on-the-ground speed test data as part of the mobile challenge and verification processes as part of the BDC.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/03/17	82 FR 40118
NPRM Comment Period End.	09/25/17	
Report & Order ...	08/01/19	84 FR 43705
Second Further Notice of Proposed Rule-making.	08/01/19	84 FR 43764
Second Further NPRM Comment Period End.	10/07/19	
2nd R&O .....	07/16/20	85 FR 50886
3rd FNPRM .....	07/16/20	85 FR 50911
3rd FNPRM Comment Period End.	09/08/20	
3rd R&O .....	01/13/21	
Public Notice .....	07/16/21	86 FR 40398
Public Notice Comment Period End.	09/27/21	
Order .....	03/09/22	
Next Action Undetermined.		

#### *Regulatory Flexibility Analysis Required: Yes.*

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#### **573. Call Authentication Trust Anchor [3060-AL00]**

*Legal Authority:* 47 U.S.C. 201; 47 U.S.C. 251; 47 U.S.C. 227; 47 U.S.C. 227b; 47 U.S.C. 503

*Abstract:* On June 6, 2019, the Commission adopted a Declaratory Ruling and Third Further Notice of Proposed Rulemaking (CG Docket No. 17-59, WC Docket No. 17-97) that proposed and sought comment on mandating implementation of STIR/SHAKEN in the event that major voice service providers did not voluntarily implement the framework by the end of 2019.

On December 30, 2019, Congress enacted the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act. Along with numerous other provisions directed at addressing robocalls, the TRACED Act directs the Commission to require all voice service providers to implement STIR/SHAKEN in the internet Protocol (IP) portions of their networks, and to implement an effective caller ID authentication framework in the non-IP portions of their networks. The TRACED Act further creates processes by which voice service providers may be exempt from this mandate if the Commission determines

they have achieved certain implementation benchmarks, and by which voice service providers may be granted a delay in compliance based on a finding of undue hardship because of burdens or barriers to implementation or based on a delay in development of a caller ID authentication protocol for calls delivered over non-IP networks.

On March 31, 2020, the Commission adopted a Report and Order and Further Notice of Proposed Rulemaking (WC Docket Nos. 17-97, 20-67). The Report and Order mandated that all originating and terminating voice service providers implement the STIR/SHAKEN caller ID authentication framework in the IP portions of their networks by June 30, 2021. In the Further Notice the Commission sought comment on proposals to further promote caller ID authentication and implement the TRACED Act.

On September 29, 2020, the Commission adopted a Second Report and Order (WC Docket No. 17-97). The Second Report and Order implemented rules (1) granting extensions for compliance with the STIR/SHAKEN implementation mandate for small voice service providers, voice service providers that cannot obtain a SPC token from the Governance Authority, services scheduled for section 214 discontinuance, for those portions of a voice service provider's network that rely on non-IP technology, and establishing a process for individual voice service providers to seek provider specific extensions; (2) requiring voice service providers using non-IP technology either to upgrade their networks to IP to enable STIR/SHAKEN implementation, or work to develop non-IP caller ID authentication technology and implement a robocall mitigation program in the interim; (3) establishing a process where by a voice service provider may be exempt from the STIR/SHAKEN implementation mandate if the provider has achieved certain implementation benchmarks; (4) prohibiting voice service providers from imposing line item charges on consumer and small business subscribers for caller ID authentication; and (5) requiring intermediate providers to implement STIR/SHAKEN. On May 20, 2021, the Commission released a Third Further Notice of Proposed Rulemaking proposing to shorten the small provider extension from two years to one for a subset of small voice service providers that are at a heightened risk of originating an especially large amount of robocall traffic.

On January 13, 2021, the Commission adopted a Second Further Notice of Proposed Rulemaking proposing and



seeking comment on a limited role for the Commission to oversee certificate revocation decisions by the private STIR/SHAKEN Governance Authority that would have the effect of placing providers in noncompliance with the Commission's rules. On August 5, 2021, the Commission adopted a Third Report and Order which adopted rules creating this oversight role.

On September 30, 2021, the Commission adopted a Fourth Further Notice of Proposed Rulemaking proposing to require gateway providers to apply STIR/SHAKEN caller ID authentication to, and perform robocall mitigation on, foreign-originated calls with U.S. numbers, seeking comment on revisions to the information that filers must submit to the Robocall Mitigation Database, and clarifying the obligations of voice service providers and intermediate providers with respect to calls to and from Public Safety Answer Points and other emergency services providers.

On December 9, 2021, the Commission adopted a Fourth Report and Order adopting rules requiring non-facilities based small voice providers implement STIR/SHAKEN by June 30, 2022, and requiring small voice providers of any kind suspected of originating illegal robocalls to implement STIR/SHAKEN on an accelerated timeline.

On May 19, 2022, the Commission adopted a Fifth Report and Order, Order on Reconsideration, Order, and Fifth Further Notice of Proposed Rulemaking. The Fifth Report and Order and Order required gateway providers to submit a certification to the Robocall Mitigation Database, implement STIR/SHAKEN caller ID authentication as well as several other requirements, including an obligation to mitigate illegal robocall traffic and submit a mitigation plan to the Robocall Mitigation Database regardless of their STIR/SHAKEN implementation status. The Order on Reconsideration expanded the obligation of domestic providers to block calls carrying US NANP numbers from foreign providers not listed in the Robocall Mitigation Database. The Fifth Further Notice of Proposed Rulemaking sought comment on further steps to combat illegal robocalls, including extending requirements for authentication and filing in the Robocall Mitigation Database, requiring additional measures for robocall mitigation, enhancing enforcement mechanisms and other related issues aimed at closing existing potential loopholes.

*Timetable:*

Action	Date	FR Cite
NOI .....	07/14/17	
DR and 3rd FNPRM.	06/06/19	84 FR 29478
NPRM .....	06/24/19	84 FR 29478
NPRM Comment Period End.	08/23/19	
3rd FNPRM Comment Period End.	08/23/19	
R&O and FNPRM FNPRM Comment Period End.	03/31/20	85 FR 22029
2nd R&O .....	09/29/20	85 FR 73360
2nd FNPRM .....	01/13/21	86 FR 9894
2nd FNPRM Comment Period.	03/19/21	
3rd FNPRM .....	05/20/21	86 FR 30571
3rd R&O .....	08/05/21	86 FR 48511
3rd FNPRM Comment Period End.	08/19/21	
4th FNPRM .....	10/01/21	86 FR 59084
4th FNPRM Comment Period End.	11/26/21	
4th R&O .....	12/09/21	
5th R&O, Order on Reconsideration.	05/19/22	87 FR 42916
5th FNPRM .....	05/19/22	87 FR 42670
5th FNPRM Comment Period End.	05/19/22	
Next Action Undetermined.		

*Regulatory Flexibility Analysis*  
*Required: Yes.*

*Agency Contact:* Jonathan Lechter, Attorney Advisor, Federal Communications Commission, Wireline Competition Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-0984, *Email:* jonathan.lechter@fcc.gov.  
*RIN:* 3060-AL00

**574. Implementation of the National Suicide Improvement Act of 2018 [3060-AL01]**

*Legal Authority:* 47 U.S.C. 201; 47 U.S.C. 251

*Abstract:* On August 14, 2018, Congress passed the National Suicide Hotline Improvement Act (Act). Pub. L. 115-233, 132 Stat. 2424 (2018). The purpose of the Act was to study and report on the feasibility of designating a 3-digit dialing code to be used for a national suicide prevention and mental health crisis hotline system by considering each of the current N11 designations. The Act directed the Commission to: (1) conduct a study that examines the feasibility of designating a simple, easy-to-remember, 3-digit dialing code to be used for a national suicide prevention and mental health crisis hotline system; and (2) analyze how well the current National Suicide

Prevention Lifeline is working to address the needs of veterans. The Act also directed the Commission to coordinate with the Department of Health and Human Services' Substance Abuse and Mental Health Services Administration (SAMHSA), the Secretary of Veterans Affairs, and the North American Numbering Council (NANC) in conducting the study, and to produce a report on the study by August 14, 2019.

On August 14, 2019, the Wireline Competition Bureau and Office of Economics and Analytics submitted its report to Congress recommending that: (1) a 3-digit dialing code be used for a national suicide prevention and mental health crisis hotline system; and (2) the Commission should initiate a rulemaking proceeding to consider designating 988 as the 3-digit code.

On December 12, 2019, the Commission released a notice of proposed rulemaking (NPRM) proposing to designate 988 as a new, nationwide, 3-digit dialing code for a suicide prevention and mental health crisis hotline. WC Docket No. 18-336. The NPRM proposes that calls made to 988 be directed to the existing National Suicide Prevention Lifeline, which is made up of an expansive network of over 170 crisis centers located across the United States, and to the Veterans Crisis Line. The NPRM also proposes to require all telecommunications carriers and interconnected VoIP service providers to make, within 18 months, any changes necessary to ensure that users can dial 988 to reach the National Suicide Prevention Lifeline and Veterans Crisis Line.

On July 16, 2020, the Commission adopted an Order designating 988 as the 3-digit number to reach the Lifeline and Veterans Crisis Line (800-273-TALK or 800-273-8255) and requiring all telecommunications carriers, interconnected voice over internet Protocol (VoIP) providers, and one-way VoIP providers to make any network changes necessary to ensure that users can dial 988 to reach the Lifeline by July 16, 2022.

On October 16, 2020, the Communications Equality Advocates filed a petition for partial reconsideration of the FCC's July 16, 2020 Report and Order. In their petition, Communications Equality Advocates requested that the FCC revise the Order to mandate text-to-988 and direct video calling (DVC) requirements and to have such requirements be implemented on the same timeline as voice calls to 988, by July 16, 2022.

On October 17, 2020, Congress enacted the National Suicide Hotline



Designation Act of 2020 (2020 Act). Public Law 116–172, 134 Stat. 832 (2020). The 2020 Act, among other things, designates 988 as the universal telephone number within the United States for the purpose of the national suicide prevention and mental health crisis hotline system operating through the National Suicide Prevention Lifeline,” with designation occurring one year after enactment.

On November 9, 2020, pursuant to 2020 Act’s requirements that the Commission submit a report on the feasibility and cost of attaching an automatic dispatchable location with 988 calls, the Commission issued a Public Notice that sought comment on these issues.

On April 22, 2021 the Commission adopted a Further Notice of Proposed Rulemaking (FNPRM) that proposes to require text service providers support text messages to 988 by routing texts to the toll free number.

On November 19, 2020, pursuant to 2020 Act’s requirements that the Commission submit a report on the feasibility and cost of attaching an automatic dispatchable location with 988 calls, the Commission issued a Public Notice that sought comment on these issues. A Report to Congress regarding geolocation was released on April 15, 2021.

On April 22, 2021 the Commission adopted a Further Notice of Proposed Rulemaking (FNPRM) that proposes to require text service providers support text messages to 988 by routing texts to the toll free number. On November 19, 2021, the Commission adopted an Order requiring the industry to enable texting to 988 by the same deadline as for voice calls, July 16, 2022.

On May 24, 2022, the Commission, following up on its report to Congress, hosted a forum in coordination with the U.S. Department of Health and Human Services and the U.S. Department of Veterans Affairs that convened various stakeholders to discuss issues surrounding geolocation. Participants included state and local entities; suicide prevention and mental health experts and advocates; communications industry leaders; and technical experts. The Commission opened the event to the public via live feed on the Commission’s website, and audience members submitted questions to panelists by email.

#### Timetable:

Action	Date	FR Cite
NPRM .....	01/15/20	85 FR 2359
NPRM Comment Period End.	03/16/20	

Action	Date	FR Cite
Report & Order ...	07/16/20	85 FR 79014
PFR .....	10/16/20	
Oppositions Due	12/02/20	
Public Notice .....	12/08/20	
Replies Due .....	12/14/20	
Public Notice Comment Period End.	01/11/21	
FNPRM .....	06/11/21	86 FR 31404
FNPRM Comment Period End.	08/10/21	
Report & Order ...	11/19/21	
Next Action Undetermined.		

#### Regulatory Flexibility Analysis Required: Yes.

*Agency Contact:* Michelle Sclater, Attorney, Wireline Competition Bureau, Federal Communications Commission, Wireline Competition Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0388, *Email:* [michelle.sclater@fcc.gov](mailto:michelle.sclater@fcc.gov).  
*RIN:* 3060–AL01

#### 575. Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services [3060–AL02]

*Legal Authority:* 47 U.S.C. 10; 47 U.S.C. 251

*Abstract:* On November 22, 2019, the Commission adopted a Notice of Proposed Rulemaking (NPRM) seeking comment on proposals to update the unbundling and avoided-cost resale obligations stemming from the 1996 Act and applicable only to incumbent LECs. Many of these obligations appear to no longer be necessary in many geographic areas due to vigorous competition for mass market broadband services in urban areas and numerous intermodal voice capabilities and services. But recognizing that rural areas pose special challenges for broadband deployment, the NPRM did not propose any change to unbundling requirements for broadband-capable loops in rural areas. The NPRM sought to promote the Commission’s efforts to reduce unnecessary and outdated regulatory burdens that appear to discourage the deployment of next-generation networks, delay the IP transition, unnecessarily burden incumbent LECs with no similar obligations placed on their competitors, and no longer benefit consumers or serve the purpose for which they were intended.

On October 27, 2020, the Commission adopted a Report and Order (1) eliminating unbundling requirements, subject to a reasonable transition period, for enterprise-grade DS1 and DS3 loops where there is evidence of actual and potential competition, for broadband-

capable DS0 loops and associated subloops in the most densely populated areas, and for voice-grade narrowband loops nationwide, but preserving unbundling requirements for DS0 loops in less densely populated areas and DS1 and DS3 loops in areas without sufficient evidence of competition; (2) eliminating unbundling requirements for network interface devices and multiunit premises subloops; (3) eliminating unbundled dark fiber transport provisioned from wire centers within a half-mile of competitive fiber networks, but providing an eight-year transition period for existing circuits so as to avoid stranding investment and last-mile deployment by competitive LECs that may harm consumers; (4) eliminating unbundling requirements for operations support systems, except where carriers are continuing to manage UNEs and for purposes of local interconnection and local number portability; and (5) eliminating remaining avoided-cost resale requirements. The Report and Order ended unbundling and resale requirements where they stifle technology transitions and broadband deployment, but preserved unbundling requirements where they are still necessary to realize the 1996 Act’s goal of robust intermodal competition benefiting all Americans.

#### Timetable:

Action	Date	FR Cite
NPRM .....	01/06/20	85 FR 472
NPRM Comment Period End.	03/06/20	
Report & Order ...	01/08/21	86 FR 1636
Petition for Reconsideration filed by Sonic Telecom.	09/29/22	
Replies to Oppositions to Petition for Reconsideration.	10/04/22	
Next Action Undetermined.		

#### Regulatory Flexibility Analysis Required: Yes.

*Agency Contact:* Michele Berlove, Assistant Division Chief, Competition Policy Div., WCB, Federal Communications Commission, Wireline Competition Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1477, *Email:* [michele.berlove@fcc.gov](mailto:michele.berlove@fcc.gov).

*RIN:* 3060–AL02

**576. Establishing a 5G Fund for Rural America; GN Docket No. 20–32 [3060–AL15]**

*Legal Authority:* 47 U.S.C. 154(i); 47 U.S.C. 214; 47 U.S.C. 254; 47 U.S.C. 303(r); 47 U.S.C. 403

*Abstract:* The 5G Fund for Rural America will distribute up to \$9 billion in universal service support through competitive bidding in two phases to bring mobile voice and 5G broadband service to rural areas of the country. 5G public interest obligations and performance requirements imposed on carriers continuing to receive legacy mobile high-cost support will help ensure that the areas they serve enjoy the benefits that 5G promises.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/26/20	85 FR 31616
Final Action .....	11/25/20	85 FR 75770x
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Kirk Burgee, Chief of Staff, Wireline Competition Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1599, *Email:* kirk.burgie@fcc.gov, *RIN:* 3060–AL15

**577. Improving Competitive Broadband Access to Multiple Tenant Environments [3060–AL35]**

*Legal Authority:* 47 U.S.C. 151–54, 201(b), 303(r), 521(4), 521(6), 544(i), and 548

*Abstract:* In June 2017, the Commission issued a Notice of Inquiry seeking comment on the state of broadband competition in multiple tenant environments (MTEs) and whether additional Commission action in this area is warranted to eliminate or reduce barriers faced by broadband providers that seek to serve MTE occupants. In July 2019, the Commission issued a Notice of Proposed Rulemaking seeking further targeted comment on a variety of issues that may affect the provisioning of broadband to MTEs, including exclusive marketing and wiring arrangements, revenue sharing agreements, state and local regulations, and the Commission's legal authority to address broadband, telecommunications, and video deployment and competition in MTEs. In February 2022, the Commission

adopted a Report and Order and Declaratory Ruling that (1) adopted new rules prohibiting providers from entering into certain types of revenue sharing agreements that are used to evade our existing rules; (2) adopted new rules requiring providers to disclose the existence of exclusive marketing arrangements in simple, easy-to-understand language; and (3) clarified that existing Commission rules regarding cable inside wiring prohibit so-called sale-and-leaseback arrangements which effectively deny access to alternative providers. In taking these actions, the Commission is promoting tenant choice and competition in the provision of communications services to the benefit of those who live and work in MTEs.

*Timetable:*

Action	Date	FR Cite
Notice of Inquiry ..	06/22/17	
Notice of Inquiry Comment Period End.	08/22/17	
NPRM .....	07/31/19	84 FR 37219
NPRM Comment Period End.	09/30/19	
Report & Order, Declaratory Ruling.	03/28/22	87 FR 17181
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Matthew Collins, Deputy Division Chief, Wireline Competition Bureau, Federal Communications Commission, Wireline Competition Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–7141, *Email:* matthew.collins@fcc.gov, *RIN:* 3060–AL35

**FEDERAL COMMUNICATIONS COMMISSION (FCC)***Wireline Competition Bureau**Completed Actions***578. IP-Enabled Services; WC Docket No. 04–36 [3060–AI48]**

*Legal Authority:* 47 U.S.C. 151 and 152; . . .

*Abstract:* The notice seeks comment on ways in which the Commission might categorize or regulate IP-enabled services. It poses questions regarding the proper allocation of jurisdiction over each category of IP-enabled service. The notice then requests comment on whether the services comprising each

category constitute “telecommunications services” or “information services” under the definitions set forth in the Act. Finally, noting the Commission's statutory forbearance authority and title I ancillary jurisdiction, the notice describes a number of central regulatory requirements (including, for example, those relating to access charges, universal service, E911, and disability accessibility), and asks which, if any, should apply to each category of IP-enabled services.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/29/04	69 FR 16193
NPRM Comment Period End.	07/14/04	
First R&O .....	06/03/05	70 FR 37273
Public Notice .....	06/16/05	70 FR 37403
First R&O Effective.	07/29/05	70 FR 43323
Public Notice .....	08/31/05	70 FR 51815
R&O .....	07/10/06	71 FR 38781
R&O and FNPRM	06/08/07	72 FR 31948
FNPRM Comment Period End.	07/09/07	72 FR 31782
R&O .....	08/06/07	72 FR 43546
Public Notice .....	08/07/07	72 FR 44136
R&O .....	08/16/07	72 FR 45908
Public Notice .....	11/01/07	72 FR 61813
Public Notice .....	11/01/07	72 FR 61882
Public Notice .....	12/13/07	72 FR 70808
Public Notice .....	12/20/07	72 FR 72358
R&O .....	02/21/08	73 FR 9463
NPRM .....	02/21/08	73 FR 9507
Order .....	05/15/08	73 FR 28057
Order .....	07/29/09	74 FR 37624
R&O .....	08/07/09	74 FR 39551
Public Notice .....	10/14/09	74 FR 52808
Announcement of Effective Date.	03/19/10	75 FR 13235
Public Notice .....	05/20/10	75 FR 28249
Public Notice .....	06/11/10	75 FR 33303
NPRM, Order, & NOI.	06/19/13	78 FR 36679
R&O .....	10/29/15	80 FR 66454
Erratum .....	01/11/16	81 FR 1131
Announcement of Effective Date.	02/24/16	81 FR 5920
Withdrawn .....	10/12/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Melissa Kinkel, Deputy Division Chief, Wireline Competition Bureau, Federal Communications Commission, Wireline Competition Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–7958, *Fax:* 202 418–1413, *Email:* melissa.kinkel@fcc.gov, *RIN:* 3060–AI48

[FR Doc. 2023–02039 Filed 2–21–23; 8:45 am]

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# FEDERAL REGISTER

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Part XXIII

Federal Reserve System

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Semiannual Regulatory Agenda

**FEDERAL RESERVE SYSTEM****12 CFR Ch. II****Semiannual Regulatory Flexibility Agenda**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** The Board is issuing this agenda under the Regulatory Flexibility Act and the Board's Statement of Policy Regarding Expanded Rulemaking Procedures. The Board anticipates having under consideration regulatory matters as indicated below during the period December 2022 through May 2023. The next agenda will be published in spring 2023.

**DATES:** Comments about the form or content of the agenda may be submitted any time during the next 6 months.

**ADDRESSES:** Comments should be addressed to Ann E. Misback, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**FOR FURTHER INFORMATION CONTACT:** A staff contact for each item is indicated with the regulatory description below.

**SUPPLEMENTARY INFORMATION:** The Board is publishing its fall 2022 agenda as part of the Fall 2022 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget under Executive Order 12866. The agenda also identifies rules the Board has selected for review under section 610(c) of the Regulatory Flexibility Act, and public comment is invited on those entries. The complete Unified Agenda will be available to the public at the following website: [www.reginfo.gov](http://www.reginfo.gov). Participation

by the Board in the Unified Agenda is on a voluntary basis.

The Board's agenda is divided into four sections. The first, Proposed Rule Stage, reports on matters the Board may consider for public comment during the next 6 months. The second section, Final Rule Stage, reports on matters that have been proposed and are under Board consideration. The third section, Completed Actions, reports on regulatory matters the Board has completed or is not expected to consider further. And a fourth section, Long-Term Actions, reports on matters where the next action is undetermined, 00/00/0000, or will occur more than 12 months after publication of the Agenda. A dot (•) preceding an entry indicates a new matter that was not a part of the Board's previous agenda.

**Ann E. Misback,**  
*Secretary of the Board.*

**FEDERAL RESERVE SYSTEM—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
579 .....	Regulation LL—Savings and Loan Holding Companies and Regulation MM—Mutual Holding Companies (Docket No: R-1429).	7100-AD80

**FEDERAL RESERVE SYSTEM—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
580 .....	Source of Strength ( <b>Section 610 Review</b> ) .....	7100-AE73

**FEDERAL RESERVE SYSTEM—COMPLETED ACTIONS**

Sequence No.	Title	Regulation Identifier No.
581 .....	Regulation II—Debit Card Interchange Fees and Routing (Docket No: R-1748) .....	7100-AG15

**FEDERAL RESERVE SYSTEM (FRS)**

## Final Rule Stage

**579. Regulation LL—Savings and Loan Holding Companies and Regulation MM—Mutual Holding Companies (Docket No: R-1429) [7100-AD80]**

*Legal Authority:* 5 U.S.C. 552; 5 U.S.C. 559; 5 U.S.C. 1813; 5 U.S.C. 1817; 5 U.S.C. 1828

*Abstract:* The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) transferred responsibility for supervision of Savings and Loan Holding Companies (SLHCs) and their non-depository subsidiaries from the Office of Thrift Supervision (OTS) to the Board of Governors of the Federal Reserve System (the Board), on July 21, 2011. The Act also transferred supervisory functions related to Federal

savings associations and State savings associations to the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC), respectively. The Board on August 12, 2011, approved an interim final rule for SLHCs, including a request for public comment. The interim final rule transferred from the OTS to the Board the regulations necessary for the Board to supervise SLHCs, with certain technical and substantive modifications. The interim final rule has three components: (1) New Regulation LL (part 238), which sets forth regulations generally governing SLHCs; (2) new Regulation MM (part 239), which sets forth regulations governing SLHCs in mutual form; and (3) technical amendments to existing Board regulations necessary to

accommodate the transfer of supervisory authority for SLHCs from the OTS to the Board. The structure of interim final Regulation LL closely follows that of the Board's Regulation Y, which governs bank holding companies, in order to provide an overall structure to rules that were previously found in disparate locations. In many instances, interim final Regulation LL incorporated OTS regulations with only technical modifications to account for the shift in supervisory responsibility from the OTS to the Board. Interim final Regulation LL also reflects statutory changes made by the Dodd-Frank Act with respect to SLHCs, and incorporates Board precedent and practices with respect to applications processing procedures and control issues, among other matters. Interim final Regulation MM organized

existing OTS regulations governing SLHCs in mutual form (MHCs) and their subsidiary holding companies into a single part of the Board's regulations. In many instances, interim final Regulation MM incorporated OTS regulations with only technical modifications to account for the shift in supervisory responsibility from the OTS to the Board. Interim final Regulation MM also reflects statutory changes made by the Dodd-Frank Act with respect to MHCs. The interim final rule also made technical amendments to Board rules to facilitate supervision of SLHCs, including to rules implementing Community Reinvestment Act requirements and to Board procedural and administrative rules. In addition, the Board made technical amendments to implement section 312(b)(2)(A) of the Act, which transfers to the Board all rulemaking authority under section 11 of the Home Owner's Loan Act relating to transactions with affiliates and extensions of credit to executive officers, directors, and principal shareholders. These amendments include revisions to parts 215 (Insider Transactions) and part 223 (Transactions with Affiliates) of Board regulations.

*Timetable:*

Action	Date	FR Cite
Board Requested Comment.	09/13/11	76 FR 56508
Board Expects Further Action.	06/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Scott Tkacz, Sr., Special Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452-2744.

Victoria Szybillo, Senior Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 475-6325.

*RIN:* 7100-AD80

## FEDERAL RESERVE SYSTEM (FRS)

### Long-Term Actions

#### 580. Source of Strength (Section 610 Review) [7100-AE73]

*Legal Authority:* 12 U.S.C. 1831(o)

*Abstract:* The Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) plan to issue a proposed rule to implement section 616(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 616(d) requires that bank holding companies, savings and loan holding companies, and other companies that directly or indirectly control an insured depository institution serve as a source of strength for the insured depository institution.

*Timetable:*

Action	Date	FR Cite
Board Expects Further Action.	12/00/23	

*Regulatory Flexibility Analysis Required:* Undetermined.

*Agency Contact:* Kathryn Ballintine, Manager, Federal Reserve System, Division of Supervision and Regulation, Washington, DC 20551, *Phone:* 202 452-2555.

Melissa Clark, Lead Financial Institution Policy Analyst, Federal Reserve System, Division of Supervision and Regulation, Washington, DC 20551, *Phone:* 202 452-2277.

Jay Schwarz, Assistant General Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452-2970.

Claudia Von Pervieux, Senior Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452-2552.

*RIN:* 7100-AE73

## FEDERAL RESERVE SYSTEM (FRS)

### Completed Actions

#### 581. Regulation II—Debit Card Interchange Fees and Routing (Docket No: R-1748) [7100-AG15]

*Legal Authority:* 12 U.S.C. 1693o-2

*Abstract:* The Board of Governors is adopting a final rule that amends Regulation II to specify that the requirement that each debit card transaction must be able to be processed on at least two unaffiliated payment card networks applies to card-not-present transactions, clarify the requirement that debit card issuers ensure that at least two unaffiliated networks have been enabled to process a debit card transaction, and standardize and clarify the use of certain terminology.

*Timetable:*

Action	Date	FR Cite
Board Requested Comment.	05/13/21	86 FR 26189
Board Extended Comment Period.	06/30/21	86 FR 34644
Board Adopted Final Rule.	10/11/22	87 FR 61217
Final Rule Effective.	07/01/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Cody Gaffney, Attorney, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452-2674.

*RIN:* 7100-AG15

[FR Doc. 2023-02040 Filed 2-21-23; 8:45 am]

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# FEDERAL REGISTER

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Part XXIV

National Labor Relations Board

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Semiannual Regulatory Agenda

NATIONAL LABOR RELATIONS BOARD

29 CFR Parts 101 to 103

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: National Labor Relations Board.

ACTION: Semiannual Regulatory Agenda.

SUMMARY: The following agenda of the National Labor Relations Board is published in accordance with Executive Order 12866, “Regulatory Planning and Review,” and the Regulatory Flexibility

Act (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act.

The complete Unified Agenda is available online at [www.reginfo.gov](http://www.reginfo.gov). Publication in the **Federal Register** is mandated only for regulatory flexibility agendas required under the RFA. Because the RFA does not require regulatory flexibility agendas for the regulations proposed and issued by the Board, the Board’s agenda appears only on the internet at [www.reginfo.gov](http://www.reginfo.gov).

The Board’s agenda refers to [www.regulations.gov](http://www.regulations.gov), the Government website at which members of the public

can find, review, and comment on Federal rulemakings that are published in the **Federal Register** and open for comment.

**FOR FURTHER INFORMATION CONTACT:** For further information concerning the regulatory actions listed in the agenda, contact Farah Z. Qureshi, Deputy Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570; telephone 202–273–1949, TTY/TDD 1–800–315–6572; email [Farah.Qureshi@nlrb.gov](mailto:Farah.Qureshi@nlrb.gov).

**Farah Z. Qureshi,**  
*Deputy Executive Secretary.*

NATIONAL LABOR RELATIONS BOARD—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
582 .....	Joint Employer .....	3142–AA21

NATIONAL LABOR RELATIONS BOARD (NLRB)

Proposed Rule Stage

582. Joint Employer [3142–AA21]

*Legal Authority:* 29 U.S.C. 156  
*Abstract:* The National Labor Relations Board will engage in rulemaking on the standard for determining whether two employers, as defined in section 2(2) of the National Labor Relations Act (Act), are a joint employer under the Act.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/07/22	87 FR 54641
NPRM Comment Period Extended.	10/19/22	87 FR 63465
NPRM Comment Period Extended End.	12/07/22	
Final Rule .....	08/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Farah Qureshi, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570, *Phone:* 202–273–1949, *Email:* [farah.qureshi@nlrb.gov](mailto:farah.qureshi@nlrb.gov).

Roxanne Rothschild, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570, *Phone:* 202–273–2917, *Email:* [roxanne.rothschild@nlrb.gov](mailto:roxanne.rothschild@nlrb.gov).

*RIN:* 3142–AA21

[FR Doc. 2023–02042 Filed 2–21–23; 8:45 am]

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# FEDERAL REGISTER

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Part XXV

Nuclear Regulatory Commission

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Semiannual Regulatory Agenda

**NUCLEAR REGULATORY COMMISSION****10 CFR Chapter I****[NRC–2022–0166]****Unified Agenda of Federal Regulatory and Deregulatory Actions****AGENCY:** Nuclear Regulatory Commission.**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** We are publishing our semiannual regulatory agenda (the Agenda) in accordance with Public Law 96–354, “The Regulatory Flexibility Act,” and Executive Order 12866, “Regulatory Planning and Review.” The NRC’s Agenda is a compilation of all rulemaking activities on which we have recently completed action or have proposed or are considering action. We have completed 10 rulemaking activities since our complete Agenda was issued online at the Office of Management and Budget’s website at <https://www.reginfo.gov> on June 21, 2022. This issuance of our Agenda contains 30 active and 18 long-term rulemaking activities: 2 are Economically Significant; 17 represent Other Significant agency priorities; 27 are Substantive, Nonsignificant rulemaking activities; and 2 are Administrative rulemaking activities. In addition, 6 rulemaking activities impact small entities. We are requesting comment on the rulemaking activities as identified in this Agenda. The NRC’s last Agenda was issued for public comment on August 8, 2022.

**DATES:** Submit comments on rulemaking activities as identified in this Agenda by March 24, 2023.

**ADDRESSES:** Submit comments on any rulemaking activity in the Agenda by the date and methods specified in the **Federal Register** notice for the rulemaking activity. Comments received on rulemaking activities for which the comment period has closed will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before the closure date specified in the **Federal Register** notice. You may submit comments on this Agenda through the Federal rulemaking website by going to <https://www.regulations.gov> and searching for Docket ID NRC–2022–0166. Address questions about NRC dockets to Dawn Forder, telephone: 301–415–3407; email: [Dawn.Forder@nrc.gov](mailto:Dawn.Forder@nrc.gov).

For additional direction on obtaining information and submitting comments, see “Obtaining Information and

Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Cindy K. Bladey, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3280; email: [Cindy.Bladey@nrc.gov](mailto:Cindy.Bladey@nrc.gov). Persons outside the Washington, DC, metropolitan area may call toll-free: 1–800–368–5642. For further information on the substantive content of any rulemaking activity listed in the Agenda, contact the individual listed under the heading “Agency Contact” for that rulemaking activity.

**SUPPLEMENTARY INFORMATION:****Obtaining Information and Submitting Comments***A. Obtaining Information*

Please refer to Docket ID NRC–2022–0166 when contacting the NRC about the availability of information for this document. You may obtain publicly available information related to this document by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2022–0166.

- *NRC’s PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC’s Public Document Room, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov) or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

- *Reginfo.gov:*

- For completed rulemaking activities, go to <https://www.reginfo.gov/public/do/eAgendaHistory?showStage=completed>, select “Fall 2022 The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions” from drop down menu, and select “Nuclear Regulatory Commission” from drop down menu.

- For active rulemaking activities go to <https://www.reginfo.gov/public/do/eAgendaMain> and select “Nuclear Regulatory Commission” from drop down menu.

- For long-term rulemaking activities go to <https://www.reginfo.gov/public/do/eAgendaMain>, select link for “Current Long Term Actions,” and select “Nuclear Regulatory Commission” from drop down menu.

*B. Submitting Comments*

Please include Docket ID NRC–2022–0166 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into the NRC’s Agencywide Documents Access and Management System (ADAMS). The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

**Introduction**

The Agenda is a compilation of all rulemaking activities on which an agency has recently completed action or has proposed or is considering action. The Agenda reports rulemaking activities in three major categories: completed, active, and long-term. Completed rulemaking activities are those that were completed since publication of an agency’s last Agenda; active rulemaking activities are those for which an agency currently plans to have an Advance Notice of Proposed Rulemaking, a Proposed Rule, or a Final Rule issued within the next 12 months; and long-term rulemaking activities are rulemaking activities under development but for which an agency does not expect to have a regulatory action within the 12 months after publication of the current edition of the Unified Agenda.

The NRC assigns a “Regulation Identifier Number” (RIN) to a rulemaking activity when the Commission initiates a rulemaking and approves a rulemaking plan, or when the NRC staff begins work on a Commission-delegated rulemaking that does not require a rulemaking plan. The Office of Management and Budget uses this number to track all relevant documents throughout the entire “lifecycle” of a particular rulemaking activity. The NRC reports all rulemaking activities in the Agenda that have been assigned a RIN and meet the definition

for a completed, an active, or a long-term rulemaking activity.

The information contained in this Agenda is updated to reflect any action that has occurred on a rulemaking activity since publication of our last Agenda on August 8, 2022. Specifically, the information in this Agenda has been updated through November 30, 2022. The NRC provides additional information on planned rulemaking and petition for rulemaking activities, including priority and schedule, in the NRC's Rulemaking Tracking System on our website at <https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/active/ruleindex.html>.

The date for the next scheduled action under the heading "Timetable" is the date the next regulatory action for the rulemaking activity is scheduled to be published in the **Federal Register**. The date is considered tentative and is not binding on the Commission or its staff.

The Agenda is intended to provide the public early notice and opportunity to participate in our rulemaking process. However, we may consider or act on any rulemaking activity even though it is not included in the Agenda.

#### Section 610 Periodic Reviews Under the Regulatory Flexibility Act

Section 610 of the Regulatory Flexibility Act (RFA) requires agencies to conduct a review within 10 years of issuance of those regulations that have or will have a *significant* economic impact on a *substantial* number of small entities. We undertake these reviews to decide whether the rules should be unchanged, amended, or withdrawn. At this time, we do not have any rules that have a *significant* economic impact on a *substantial* number of small entities; therefore, we have not included any RFA Section 610 periodic reviews in this edition of the Agenda. A complete

listing of our regulations that impact small entities and related Small Entity Compliance Guides are available from the NRC's website at <https://www.nrc.gov/about-nrc/regulatory/rulemaking/flexibility-act/small-entities.html>.

#### Public Comments Received on the NRC Unified Agenda

The comment period on the NRC's last Agenda (published on August 8, 2022 (<https://www.govinfo.gov/content/pkg/FR-2022-08-08/pdf/2022-14620.pdf>)) closed on September 7, 2022. The NRC did not receive any comments on its Spring 2022 Agenda.

For the Nuclear Regulatory Commission.

**Cindy K. Bladley,**

*Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.*

### NUCLEAR REGULATORY COMMISSION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
583 .....	Revision to the NRC's Acquisition Regulation (NRCAR) [NRC–2014–0033] .....	3150–AJ36
584 .....	Revision of Fee Schedules: Fee Recovery for FY 2023 [NRC–2021–0024] ( <b>Reg Plan Seq No. 226</b> ) .....	3150–AK58

References in boldface appear in The Regulatory Plan in part II of this issue of the **Federal Register**.

### NUCLEAR REGULATORY COMMISSION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
585 .....	Items Containing Byproduct Material Incidental to Production [NRC–2015–0017] .....	3150–AJ54
586 .....	Revision of Fee Schedules: Fee Recovery for Fiscal Year 2024 [NRC–2022–0046] .....	3150–AK74

### NUCLEAR REGULATORY COMMISSION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
587 .....	Revision of Fee Schedules: Fee Recovery for FY 2022 [NRC–2020–0031] .....	3150–AK44

#### NUCLEAR REGULATORY COMMISSION (NRC)

##### Proposed Rule Stage

#### 583. Revision to the NRC'S Acquisition Regulation (NRCAR) [NRC–2014–0033] [3150–AJ36]

*Legal Authority:* 42 U.S.C. 2201; 42 U.S.C. 5841

*Abstract:* This rulemaking would amend the NRC's acquisition regulation that governs the procurement of goods and services for the agency. The purpose of this rulemaking is to update the NRC's acquisitions regulations (NRCAR) to conform with external regulations, incorporate NRC organizational changes, and remove outdated or obsolete information. The

revisions would affect both internal and external stakeholders (contractors) and are needed to support current NRC contracting policies and ensure openness, transparency, and effectiveness in agency acquisitions.

##### *Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jill Daly, Nuclear Regulatory Commission, Office of Administration, Washington, DC 20055–0001, *Phone:* 301 415–8079, *Email:* [jill.daly@nrc.gov](mailto:jill.daly@nrc.gov).

*RIN:* 3150–AJ36

#### 584. Revision of Fee Schedules: Fee Recovery for FY 2023 [NRC–2021–0024] [3150–AK58]

*Regulatory Plan:* This entry is Seq. No. 226 in part II of this issue of the **Federal Register**.

*RIN:* 3150–AK58

#### NUCLEAR REGULATORY COMMISSION (NRC)

##### Long-Term Actions

#### 585. Items Containing Byproduct Material Incidental to Production [NRC–2015–0017] [3150–AJ54]

*Legal Authority:* 42 U.S.C. 2201; 42 U.S.C. 5841

*Abstract:* This rulemaking would amend the NRC's regulations regarding requirements for track-etched membranes that have been irradiated with mixed fission products during the production process. The rule also would accommodate the licensing and distribution of other irradiated products (e.g., gemstones) without the need for a specific exemption for each distributor. This rulemaking would affect the licensees and applicants for items containing byproduct material incidental to production. The rulemaking addresses a petition for rulemaking (PRM-30-65).

*Timetable:*

Action	Date	FR Cite
Regulatory Basis Regulatory Basis Comment Period End.	02/02/21 04/05/21	86 FR 7819
NPRM .....	06/27/22	87 FR 38012
NPRM Comment Period End.	09/12/22	
Final Rule .....	12/00/25	

*Regulatory Flexibility Analysis  
Required:* Yes.

*Agency Contact:* Caylee Kenny, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001, *Phone:* 301 415-7150, *Email:* caylee.kenny@nrc.gov.

*RIN:* 3150-AJ54

**586. Revision of Fee Schedules: Fee Recovery for Fiscal Year 2024 [NRC-2022-0046] [3150-AK74]**

*Legal Authority:* 31 U.S.C. 483; 42 U.S.C. 2201; 42 U.S.C. 2214; 42 U.S.C. 5841

*Abstract:* This rulemaking would amend the NRC's regulations for fee schedules. The NRC conducts this rulemaking annually to recover, to the maximum extent practicable, approximately 100 percent of the NRC's budget authority, less the budget authority for excluded activities to implement the Nuclear Energy Innovation and Modernization Act. This rulemaking would affect the fee schedules for licensing, inspection, and annual fees charged to the NRC's applicants and licensees.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/24	

*Regulatory Flexibility Analysis  
Required:* Yes.

*Agency Contact:* Anthony Rossi, Nuclear Regulatory Commission, Office of the Chief Financial Officer, Washington, DC 20555-0001, *Phone:* 301 415-7341, *Email:* anthony.rossi@nrc.gov.

*RIN:* 3150-AK74

**NUCLEAR REGULATORY COMMISSION (NRC)**

Completed Actions

**587. Revision of Fee Schedules: Fee Recovery for FY 2022 [NRC-2020-0031] [3150-AK44]**

*Legal Authority:* 31 U.S.C. 483; 42 U.S.C. 2201; 42 U.S.C. 2214; 42 U.S.C. 5841

*Abstract:* This rulemaking would amend the NRC's regulations for fee schedules. The NRC conducts this rulemaking annually to recover approximately 100 percent of the NRC's FY 2022 budget authority, less excluded activities to implement NEIMA. This rulemaking would affect the fee schedules for licensing, inspection, and annual fees charged to the NRC's applicants and licensees.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/23/22	87 FR 10081
NPRM Comment Period End.	03/25/22	
Final Rule .....	06/22/22	87 FR 37197
Final Rule Effective.	08/22/22	

*Regulatory Flexibility Analysis  
Required:* Yes.

*Agency Contact:* Anthony Rossi, Nuclear Regulatory Commission, Office of the Chief Financial Officer, Washington, DC 20555-0001, *Phone:* 301 415-7341, *Email:* anthony.rossi@nrc.gov.

*RIN:* 3150-AK44

[FR Doc. 2023-02041 Filed 2-21-23; 8:45 am]

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Part XXVI

Securities and Exchange Commission

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Semiannual Regulatory Agenda

**SECURITIES AND EXCHANGE COMMISSION****17 CFR Ch. II**

[Release Nos. 33–11118; 34–96009; IA–6165; IC–34725; File No. S7–24–22]

**Regulatory Flexibility Agenda**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** The Securities and Exchange Commission is publishing the Chair’s agenda of rulemaking actions pursuant to the Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 94 Stat. 1164) (Sept. 19, 1980). The items listed in the Regulatory Flexibility Agenda for Fall 2022 reflect only the priorities of the Chair of the U.S. Securities and Exchange Commission, and do not necessarily reflect the view and priorities of any individual Commissioner.

Information in the agenda was accurate on October 6, 2022, the date on which the Commission’s staff completed compilation of the data. To the extent possible, rulemaking actions by the Commission since that date have been reflected in the agenda. The Commission invites questions and public comment on the agenda and on the individual agenda entries.

The Commission is now printing in the **Federal Register**, along with our preamble, only those agenda entries for which we have indicated that preparation of an RFA analysis is required.

The Commission’s complete RFA agenda will be available online at [www.reginfo.gov](http://www.reginfo.gov).

**DATES:** Comments should be received on or before March 24, 2023.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/other.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7–24–22 on the subject line.

*Paper Comments*

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. All submissions should refer to File No. S7–24–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s website (<https://www.sec.gov/rules/other.shtml>). Comments are also available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission’s Public Reference Room. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.
- FOR FURTHER INFORMATION CONTACT:** Sarit Klein, Office of the General Counsel, 202–551–5037.

**SUPPLEMENTARY INFORMATION:** The RFA requires each Federal agency, twice each year, to publish in the **Federal Register** an agenda identifying rules that

the agency expects to consider in the next 12 months that are likely to have a significant economic impact on a substantial number of small entities (5 U.S.C. 602(a)). The RFA specifically provides that publication of the agenda does not preclude an agency from considering or acting on any matter not included in the agenda and that an agency is not required to consider or act on any matter that is included in the agenda (5 U.S.C. 602(d)). The Commission may consider or act on any matter earlier or later than the estimated date provided on the agenda. While the agenda reflects the current intent to complete a number of rulemakings in the next year, the precise dates for each rulemaking at this point are uncertain. Actions that do not have an estimated date are placed in the long-term category; the Commission may nevertheless act on items in that category within the next 12 months. The agenda includes new entries, entries carried over from prior publications, and rulemaking actions that have been completed (or withdrawn) since publication of the last agenda.

The following abbreviations for the acts administered by the Commission are used in the agenda:

“Securities Act”—Securities Act of 1933  
 “Exchange Act”—Securities Exchange Act of 1934  
 “Investment Company Act”—Investment Company Act of 1940  
 “Investment Advisers Act”—Investment Advisers Act of 1940  
 “Dodd Frank Act”—Dodd-Frank Wall Street Reform and Consumer Protection Act

The Commission invites public comment on the agenda and on the individual agenda entries.

By the Commission.

**Vanessa A. Countryman,**  
*Secretary.*

**DIVISION OF CORPORATION FINANCE—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
588 .....	Rule 144 Holding Period .....	3235–AM78

**DIVISION OF CORPORATION FINANCE—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
589 .....	Listing Standards for Recovery of Erroneously Awarded Compensation .....	3235–AK99

**DIVISION OF CORPORATION FINANCE—COMPLETED ACTIONS**

Sequence No.	Title	Regulation Identifier No.
590 .....	Pay Versus Performance .....	3235–AL00

## DIVISION OF CORPORATION FINANCE—COMPLETED ACTIONS—Continued

Sequence No.	Title	Regulation Identifier No.
591 .....	Updating EDGAR Filing Requirements and Form 144 Filings .....	3235-AM15
592 .....	Proxy Voting Advice .....	3235-AM92

## DIVISION OF INVESTMENT MANAGEMENT—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
593 .....	Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting on Executive Compensation Votes by Institutional Investment Managers.	3235-AK67
594 .....	Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and ETFs; Fee Information in Investment Company Ads.	3235-AM52
595 .....	Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews .....	3235-AN07
596 .....	Cybersecurity Risk Governance .....	3235-AN08

## DIVISION OF TRADING AND MARKETS—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
597 .....	Removal of References to Credit Ratings From Regulation M .....	3235-AL14

**SECURITIES AND EXCHANGE COMMISSION (SEC)***Division of Corporation Finance*

## Proposed Rule Stage

**588. Rule 144 Holding Period [3235-AM78]**

*Legal Authority:* 15 U.S.C. 77b; 15 U.S.C. 77b note; 15 U.S.C. 77c; 15 U.S.C. 77d; 15 U.S.C. 77f; 15 U.S.C. 77g; 15 U.S.C. 77h; 15 U.S.C. 77j; 15 U.S.C. 77r; 15 U.S.C. 77s; 15 U.S.C. 77z-3; 15 U.S.C. 77sss; 15 U.S.C. 78c; 15 U.S.C. 78d; 15 U.S.C. 78j; 15 U.S.C. 78l; 15 U.S.C. 78m; 15 U.S.C. 78n; 15 U.S.C. 78o; 15 U.S.C. 78o-7 note; 15 U.S.C. 78t; 15 U.S.C. 78w; 15 U.S.C. 78ll(d); 15 U.S.C. 78mm; 15 U.S.C. 80a-8; 15 U.S.C. 80a-24; 15 U.S.C. 80a-26; 15 U.S.C. 80a-28; 15 U.S.C. 80a-29; 15 U.S.C. 80a-30; 15 U.S.C. 80a-37; sec. 201(a) Pub. L. 112-106, 126 Stat. 313 (2012); sec. 401 Pub. L. 112-106, 126 Stat. 313 (2012); 126 Stat. 313 (2012), unless otherwise noted; . . .

*Abstract:* The Division is considering recommending that the Commission repropose amendments to Rule 144, a non-exclusive safe harbor that permits the public resale of restricted or control securities if the conditions of the rule are met.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/19/21	86 FR 5063
NPRM Comment Period End.	03/22/21	

Action	Date	FR Cite
Second NPRM ....	10/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* John Fieldsend, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, Phone: 202 551-3430, Email: fieldsendj@sec.gov, RIN: 3235-AM78

**SECURITIES AND EXCHANGE COMMISSION (SEC)***Division of Corporation Finance*

## Final Rule Stage

**589. Listing Standards for Recovery of Erroneously Awarded Compensation [3235-AK99]**

*Legal Authority:* Pub. L. 111-203, sec. 954; 15 U.S.C. 78j-4; 15 U.S.C. 78m; 15 U.S.C. 78n; 15 U.S.C. 78w(a); 15 U.S.C. 78mm; 15 U.S.C. 77f; 15 U.S.C. 77g; 15 U.S.C. 77j; 15 U.S.C. 77s(a); 15 U.S.C. 80a-20; 15 U.S.C. 80a-29; 15 U.S.C. 80a-37; . . .

*Abstract:* The Division is considering recommending that the Commission adopt rules to implement section 954 of the Dodd Frank Act, which requires the Commission to adopt rules to direct national securities exchanges to prohibit the listing of securities of issuers that have not developed and implemented a policy providing for disclosure of the

issuer's policy on incentive-based compensation and mandating the clawback of such compensation in certain circumstances.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/14/15	80 FR 41144
NPRM Comment Period End.	09/14/15	
NPRM Comment Period Re-opened.	10/21/21	86 FR 58232
NPRM Comment Period End.	11/22/21	
NPRM Comment Period Re-opened.	06/14/22	87 FR 35938
NPRM Comment Period End.	07/14/22	
Final Action .....	04/00/23	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Anne M. Krauskopf, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, Phone: 202 551-3500, Email: krauskopfa@sec.gov.

RIN: 3235-AK99

**SECURITIES AND EXCHANGE COMMISSION (SEC)***Division of Corporation Finance*

## Completed Actions

**590. Pay Versus Performance [3235–AL00]**

*Legal Authority:* Pub. L. 111–203, sec. 953(a); 15 U.S.C. 78c(b); 15 U.S.C. 78n(i); 15 U.S.C. 78w(a); 15 U.S.C. 78mm; . . .

*Abstract:* The Commission adopted amendments to implement Section 14(i) of the Securities Exchange Act of 1934, as added by Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 14(i) directs the Commission to adopt rules requiring registrants to provide disclosure of pay versus performance. The disclosure is required in proxy or information statements in which executive compensation disclosure is required. The disclosure requirements do not apply to emerging growth companies, registered investment companies, or foreign private issuers.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/07/15	80 FR 26329
NPRM Comment Period End.	07/06/15	
NPRM Comment Period Re-opened.	02/02/22	87 FR 5751
NPRM Comment Period End.	03/04/22	
Final Action .....	09/08/22	87 FR 55134
Final Action Effective.	10/11/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Steven G. Hearne, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, Phone: 202 551–3430, Email: [hearnes@sec.gov](mailto:hearnes@sec.gov).

RIN: 3235–AL00

**591. Updating EDGAR Filing Requirements and Form 144 Filings [3235–AM15]**

*Legal Authority:* 15 U.S.C. 77d; 15 U.S.C. 77f; 15 U.S.C. 77g; 15 U.S.C. 77h; 15 U.S.C. 77j; 15 U.S.C. 77s(a); 15 U.S.C. 78c; 15 U.S.C. 78l; 15 U.S.C. 78m; 15 U.S.C. 78n; 15 U.S.C. 78o(d); 15 U.S.C. 78p; 15 U.S.C. 78w(a); 15 U.S.C. 78ll; 15 U.S.C. 80a–10; 15 U.S.C. 80a–37; 15 U.S.C. 77b; 15 U.S.C. 77b note; 15 U.S.C. 77c; 15 U.S.C. 77r; 15 U.S.C. 77s; 15 U.S.C. 77z–2; 15 U.S.C. 77z–3; 15 U.S.C. 77s(a); 15 U.S.C. 77eee; 15 U.S.C. 77ggg; 15 U.S.C. 77nnn; 15 U.S.C. 77sss; 15 U.S.C. 77sss(a); 15 U.S.C. 77ttt; 15

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*Abstract:* The Commission adopted rule and form amendments that mandate the electronic filing or submission of documents that are currently permitted electronic submissions, including the “glossy” annual report to security holders, notices of exempt solicitations and exempt preliminary roll-up communications, notices of sales of securities of certain issuers, filings of required reports by foreign private issuers and filings made by multilateral development banks on our Electronic Data Gathering, Analysis, and Retrieval system.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/22/21	86 FR 66231
NPRM Comment Period End.	12/22/21	
Final Action .....	06/10/22	87 FR 35393
Final Action Effective.	07/11/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Noel Sean Harrison, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, Phone: 202 551–3249, Email: [harrisons@sec.gov](mailto:harrisons@sec.gov).

RIN: 3235–AM15

**592. Proxy Voting Advice [3235–AM92]**

*Legal Authority:* 15 U.S.C. 78c(b); 15 U.S.C. 78n; 15 U.S.C. 78w(a); 15 U.S.C. 78mm; 15 U.S.C. 80B *et seq.*; . . .

*Abstract:* The Commission adopted amendments to the Federal proxy rules governing proxy voting advice as part of its reassessment of those rules and in light of feedback from market participants on those rules, certain developments in the market for proxy voting advice, and comments received regarding the proposed amendments. The amendments remove a condition to the availability of certain exemptions from the information and filing requirements of the Federal proxy rules for proxy voting advice businesses. The release also rescinds certain guidance that the Commission issued to investment advisers about their proxy voting obligations. In addition, the amendments remove a note that provides examples of situations in which the failure to disclose certain information in proxy voting advice may be considered misleading within the meaning of the Federal proxy rules’ prohibition on material misstatements or omissions. Finally, the release discusses the Commission’s views regarding the application of that prohibition to proxy voting advice, in particular with respect to statements of opinion.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/26/21	86 FR 67383
NPRM Comment Period End.	12/27/21	
Final Action .....	07/19/22	87 FR 43168
Final Action Effective.	09/19/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Valian Afshar, Special Counsel, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, Phone: 202 551–3440, Email: [afsharv@sec.gov](mailto:afsharv@sec.gov).

RIN: 3235–AM92



**SECURITIES AND EXCHANGE COMMISSION (SEC)**

*Division of Investment Management*  
Final Rule Stage

**593. Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting on Executive Compensation Votes by Institutional Investment Managers [3235-AK67]**

*Legal Authority:* 15 U.S.C. 78m; 15 U.S.C. 78w(a); 15 U.S.C. 78mm; 15 U.S.C. 78x; 15 U.S.C. 80a-8; 15 U.S.C. 80a-29; 15 U.S.C. 80a-30; 15 U.S.C. 80a-37; 15 U.S.C. 80a-44; Pub. L. 111-203, sec. 951

*Abstract:* The Division is considering recommending that the Commission adopt rule amendments to implement section 951 of the Dodd-Frank Act and to enhance the information reported on Form N-PX. The Commission previously proposed amendments to rules and Form N-PX that would require institutional investment managers subject to section 13(f) of the Exchange Act to report how they voted on any shareholder vote on executive compensation or golden parachutes pursuant to sections 14A(a) and (b) of the Exchange Act.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/28/10	75 FR 66622
NPRM Comment Period End.	11/18/10	
Second NPRM ....	10/15/21	86 FR 57478
Final Action .....	04/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Nathan Schurr, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, Phone: 202 551-6394, Email: schuurna@sec.gov.

*RIN:* 3235-AK67

**594. Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and ETFs; Fee Information in Investment Company Ads [3235-AM52]**

*Legal Authority:* 15 U.S.C. 77e; 15 U.S.C. 77g; 15 U.S.C. 77j; 15 U.S.C. 77s; 15 U.S.C. 78c(b); 15 U.S.C. 77f; 15 U.S.C. 78j; 15 U.S.C. 78m; 15 U.S.C. 78n; 15 U.S.C. 78o; 15 U.S.C. 78mm; 15 U.S.C. 80a-6; 15 U.S.C. 80a-8; 15 U.S.C. 80a-20; 15 U.S.C. 80a-24; 15 U.S.C. 80a-29; 15 U.S.C. 80a-37; 44 U.S.C. 3506; 44 U.S.C. 3507

*Abstract:* The Division is considering recommending that the Commission adopt a new streamlined shareholder report under the Investment Company Act of 1940. The Division is also considering recommending that the Commission adopt rule and form amendments to improve and modernize certain aspects of the current disclosure framework under the Investment Company Act.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/05/20	85 FR 70716
NPRM Comment Period End.	01/04/21	
Final Action .....	04/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Michael Kosoff, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, Phone: 202 551-6754, Email: kosoffm@sec.gov.

*RIN:* 3235-AM52

**595. Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews [3235-AN07]**

*Legal Authority:* 15 U.S.C. 80b-1 et seq.

*Abstract:* The Division is considering recommending that the Commission adopt rules under the Advisers Act to address lack of transparency, conflicts of interest, and certain other matters involving private fund advisers.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/24/22	87 FR 16886
NPRM Comment Period End.	04/25/22	
NPRM Comment Period Re-opened.	05/12/22	87 FR 29059
NPRM Comment Period End.	06/13/22	
Final Action .....	04/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Melissa Harke, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, Phone: 202 551-6722, Email: harkem@sec.gov.

*RIN:* 3235-AN07

**596. Cybersecurity Risk Governance [3235-AN08]**

*Legal Authority:* 15 U.S.C. 80b-1 et seq.; 15 U.S.C. 80a-1 et seq.

*Abstract:* The Division is considering recommending that the Commission adopt rules to enhance fund and investment adviser disclosures and governance relating to cybersecurity risks.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/09/22	87 FR 13524
NPRM Comment Period End.	04/11/22	
Final Action .....	04/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Christopher Staley, Branch Chief, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, Phone: 202 551-8475, Email: staleyc@sec.gov.

*RIN:* 3235-AN08

**SECURITIES AND EXCHANGE COMMISSION (SEC)**

*Division of Trading and Markets*

Final Rule Stage

**597. Removal of References to Credit Ratings From Regulation M [3235-AL14]**

*Legal Authority:* Pub. L. 111-203, sec. 939A

*Abstract:* Section 939A of the Dodd-Frank Act requires the Commission to remove certain references to credit ratings from its regulations and to substitute such standards of creditworthiness as the Commission determines to be appropriate. The Division is considering recommending that the Commission adopt proposed amendments to eliminate the exceptions for investment grade non-convertible debt, non-convertible preferred, and asset-backed securities (as rated by at least one Nationally Recognized Statistical Rating Organization) from Rules 101 and 102 of Regulation M and replace the exception in Rule 101 with alternative standards one based on distance to default using a Structural Credit Risk Model for non-convertible debt and non-convertible preferred debt, and one based on SF-3 shelf registration for asset-backed securities.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/06/11	76 FR 26550
NPRM Comment Period End.	07/05/11	
Final Action .....	01/08/14	79 FR 1522
Final Action Effective.	07/07/14	
NPRM .....	03/30/22	87 FR 18312

Action	Date	FR Cite	100 F Street NE, Washington, DC 20549, <i>Phone: 202 551-6439, Email: guidrozj@</i> <i>sec.gov.</i>  <i>RIN: 3235-AL14</i>
NPRM Comment Period End.	05/23/22		
Final Action .....	04/00/23		

*Regulatory Flexibility Analysis*  
*Required: Yes.*  
*Agency Contact:* John Guidroz,  
Division of Trading and Markets,  
Securities and Exchange Commission,

[FR Doc. 2023-02043 Filed 2-21-23; 8:45 am]  
**BILLING CODE 8011-01-P**



# FEDERAL REGISTER

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Part XXVII

Surface Transportation Board

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Semiannual Regulatory Agenda

**SURFACE TRANSPORTATION BOARD****49 CFR Ch. X****[STB Ex Parte No. 536 (Sub-No. 53)]****Semiannual Regulatory Agenda****AGENCY:** Surface Transportation Board.**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** The Chairman of the Surface Transportation Board is publishing the Regulatory Flexibility Agenda for fall 2022.

**FOR FURTHER INFORMATION CONTACT:** A contact person is identified for each of the rules listed below.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, sets forth several requirements for agency rulemaking. Among other things, the RFA requires that, semiannually, each agency shall publish in the **Federal Register** a Regulatory Flexibility Agenda, which shall contain:

(1) A brief description of the subject area of any rule that the agency expects to propose or promulgate, which is

likely to have a significant economic impact on a substantial number of small entities.

(2) A summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and

(3) The name and telephone number of an agency official knowledgeable about the items listed in paragraph (1).

Accordingly, a list of proceedings appears below containing information about subject areas in which the Board is currently conducting rulemaking proceedings or may institute such proceedings soon. It also contains information about existing regulations being reviewed to determine whether to propose modifications through rulemaking.

The agenda represents the Chairman's best estimate of rules that may be considered over the next 12 months but does not necessarily reflect the views of

any other individual Board Member. However, section 602(d) of the RFA, 5 U.S.C. 602(d), provides: "Nothing in [section 602] precludes an agency from considering or acting on any matter not included in a Regulatory Flexibility Agenda or requires an agency to consider or act on any matter listed in such agenda."

The Chairman is publishing the agency's Regulatory Flexibility Agenda for fall 2022 as part of the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Unified Agenda is coordinated by the Office of Management and Budget (OMB), pursuant to Executive Orders 12866 and 13563. The Board is participating voluntarily in the program to assist OMB and has included rulemaking proceedings in the Unified Agenda beyond those required by the RFA.

Dated: September 30, 2022.

By the Board, Martin J. Oberman.

**Jeffrey Herzig,**  
Clearance Clerk.

**SURFACE TRANSPORTATION BOARD—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
598 .....	Review of Commodity, Boxcar, and TOFC/COFC Exemptions, EP 704 (Sub-No. 1) .....	2140-AB29

**SURFACE TRANSPORTATION BOARD (STB)****Long-Term Actions****598. Review of Commodity, Boxcar, and TOFC/COFC Exemptions, EP 704 (Sub-No. 1) [2140-AB29]**

**Legal Authority:** 49 U.S.C. 10502; 49 U.S.C. 13301

**Abstract:** The Board proposed to revoke the class exemptions for the rail transportation of: (1) crushed or broken stone or riprap; (2) hydraulic cement; and (3) coke produced from coal, primary iron or steel products, and iron or steel scrap, wastes, or tailings. On March 19, 2019, the Board issued a decision waiving the prohibition on ex parte communications in this proceeding and providing a 90-day period for meetings with Board members. By decision served September 30, 2020 (published October 5, 2020), the Board invited public comment on a

new approach its Office of Economics has developed for possible use in considering class exemption and revocation issues. Board staff held technical conferences on the proposed approach on December 18, 2020, and January 15, 2021.

**Timetable:**

Action	Date	FR Cite
NPRM .....	03/28/16	81 FR 17125
NPRM Comment Period End.	07/26/16	
NPRM Reply Comment Period End.	08/26/16	
Request for Further Comment in Rulemaking Proceeding.	10/05/20	85 FR 62689
Comment Period End.	01/29/21	
Reply Comment Period End.	03/01/21	

Action	Date	FR Cite
Next Action Undetermined.		

**Regulatory Flexibility Analysis Required:** Yes.

**Agency Contact:** Amy Ziehm, Branch Chief, Office of Proceedings, Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001, *Phone:* 202 245-0391, *Email:* amy.ziehm@stb.gov.

Francis O'Connor, Deputy Director, Office of Economics, Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001, *Phone:* 202 245-0331, *Email:* francis.o'connor@stb.gov.

**RIN:** 2140-AB29

[FR Doc. 2023-02022 Filed 2-21-23; 8:45 am]

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