

## REGULATORY INFORMATION SERVICE CENTER

### Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions—Fall 2023

**AGENCY:** Regulatory Information Service Center.

**ACTION:** Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions.

**SUMMARY:** Publication of the Fall 2023 Unified Agenda of Federal Regulatory and Deregulatory Actions represents a key component of the regulatory planning mechanism prescribed in Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” (58 FR 51735, as amended) and reaffirmed in E.O. 13563, “Improving Regulation and Regulatory Review,” (76 FR 3821) and E.O. 14094, “Modernizing Regulatory Review,” (88 FR 21879). The Regulatory Flexibility Act requires that agencies publish semiannual regulatory agendas in the **Federal Register** describing regulatory actions they are developing that may have a significant economic impact on a substantial number of small entities (5 U.S.C. 602). The Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda), published in the fall and spring, helps agencies fulfill all of these requirements. All Federal regulatory agencies have chosen to publish their regulatory agendas as part of this publication. The complete publication of the Fall 2023 Unified Agenda contains the Regulatory Plans of 29 Federal agencies and 69 Federal agency regulatory agendas available to the public at [www.reginfo.gov](http://www.reginfo.gov).

The Fall 2023 Unified Agenda publication appearing in the **Federal Register** includes the Regulatory Plan and agency Regulatory Flexibility Agendas, in accordance with the publication requirements of the Regulatory Flexibility Act. Agency Regulatory Flexibility Agendas contain only those Agenda entries for rules that are likely to have a significant economic impact on a substantial number of small entities and entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act.

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

**FOR FURTHER INFORMATION CONTACT:** For further information about specific regulatory actions, please refer to the agency contact listed for each entry. To provide comment on or to obtain further

information about this publication, contact: Boris Arratia, Director, Regulatory Information Service Center (MV), General Services Administration, 1800 F Street NW, Washington, DC 20405, 703–795–0816. You may also send comments to us by email at: [RISC@gsa.gov](mailto:RISC@gsa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

#### Introduction to the Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions

- I. What are the Regulatory Plan and the Unified Agenda?
- II. Why are the Regulatory Plan and the Unified Agenda published?
- III. How are the Regulatory Plan and the Unified Agenda organized?
- IV. What information appears for each entry?
- V. Abbreviations
- VI. How can users get copies of the Plan and the Agenda?

#### Introduction to the Fall 2023 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  
Equal Employment Opportunity Commission  
General Services Administration  
National Archives and Records Administration  
National Archives and Records Administration  
National Science Foundation  
Office of Personnel Management  
Pension Benefit Guaranty Corporation  
Small Business Administration  
Social Security Administration

###### Joint Authority

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

###### Independent Regulatory Agencies

Consumer Product Safety Commission  
Federal Trade 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

Architectural and Transportation Barriers Compliance Board  
Environmental Protection Agency  
General Services Administration  
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 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 dating back to

1995. The complete online edition of the Unified Agenda includes regulatory agendas from 69 Federal agencies. Agencies of the United States Congress are not included.

The Fall 2023 Unified Agenda publication appearing in the **Federal Register** consists of the Regulatory Plan and Regulatory Flexibility Agendas, in accordance with the publication requirements of the Regulatory Flexibility Act. Agency Regulatory Flexibility Agendas contain only those Agenda entries for rules that are likely to have a significant economic impact on a substantial number of small entities and entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act. Printed entries display only the fields required by the Regulatory Flexibility Act. Complete Unified Agenda information for those entries appears online in a uniform format at [www.reginfo.gov](http://www.reginfo.gov).

The following agencies have no entries identified for inclusion in the printed Regulatory Flexibility Agenda. An asterisk (\*) indicates agencies that appear in The Regulatory Plan. The regulatory agendas of these agencies are available to the public at [www.reginfo.gov](http://www.reginfo.gov).

#### *Cabinet Departments*

Department of Housing and Urban Development\*  
Department of State  
Department of Veterans Affairs\*

#### *Other Executive Agencies*

Agency for International Development  
Committee for Purchase From People Who Are Blind or Severely Disabled  
Corporation for National and Community Service\*  
Council on Environmental Quality  
Court Services and Offender Supervision Agency for the District of Columbia  
Equal Employment Opportunity Commission\*  
Federal Mediation Conciliation Service  
Institute of Museum and Library Services  
Inter-American Foundation  
National Aeronautics and Space Administration\*  
National Archives and Records Administration\*  
National Endowment for the Arts  
National Endowment for the Humanities  
National Mediation Board  
National Science Foundation\*  
Office of Government Ethics  
Office of Management and Budget  
Office of the National Cyber Director  
Office of Personnel Management\*  
Office of the United States Trade Representative  
Peace Corps  
Pension Benefit Guaranty Corporation\*  
Railroad Retirement Board  
Selective Service System  
Social Security Administration\*  
U.S. Agency for Global Media

#### *Independent Agencies*

Commodity Futures Trading Commission  
Defense Nuclear Facilities Safety Board  
Farm Credit Administration  
Federal Deposit Insurance Corporation  
Federal Energy Regulatory Commission  
Federal Housing Finance Agency  
Federal Maritime Commission  
Federal Mine Safety and Health Review Commission  
Federal Permitting Improvement Steering Council  
Federal Trade Commission\*  
National Credit Union Administration  
National Indian Gaming Commission  
National Transportation Safety Board  
Postal Regulatory Commission  
U.S. Chemical Safety and Hazard Investigation Board

The Regulatory Information Service Center compiles the Unified Agenda for the Office of Information and Regulatory Affairs (OIRA), part of the Office of Management and Budget. OIRA is responsible for overseeing the Federal Government's regulatory, paperwork, and information resource management activities, including implementation of Executive Order 12866, as amended (incorporated in Executive Order 13563). The Center also provides information about Federal regulatory activity to the President and his Executive Office, the Congress, agency officials, and the public.

The activities included in the Agenda are, in general, those that will have a regulatory action within the next 12 months. Agencies may choose to include activities that will have a longer timeframe than 12 months. Agency agendas also show actions or reviews completed or withdrawn since the last Unified Agenda. Executive Order 12866, as amended, does not require agencies to include regulations concerning military or foreign affairs functions or regulations related to agency organization, management, or personnel matters.

Agencies prepared entries for this publication to give the public notice of their plans to review, propose, and issue regulations. They have tried to predict their activities over the next 12 months as accurately as possible, but dates and schedules are subject to change. Agencies may withdraw some of the regulations now under development, and they may issue or propose other regulations not included in their agendas. Agency actions in the rulemaking process may occur before or after the dates they have listed. The Unified Agenda does not create a legal obligation on agencies to adhere to schedules in this publication or to confine their regulatory activities to those regulations that appear within it.

## **II. Why are the Regulatory Plan and the Unified Agenda published?**

The Regulatory Plan and the Unified Agenda helps agencies comply with their obligations under the Regulatory Flexibility Act and various Executive orders and other statutes.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act requires agencies to identify those rules that may have a significant economic impact on a substantial number of small entities (5 U.S.C. 602). Agencies meet that requirement by including the information in their submissions for the Unified Agenda. Agencies may also indicate those regulations that they are reviewing as part of their periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610). Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," signed August 13, 2002 (67 FR 53461), provides additional guidance on compliance with the Act.

#### *Executive Order 12866*

Executive Order 12866, "Regulatory Planning and Review," September 30, 1993 (58 FR 51735), as amended, requires covered agencies to prepare an agenda of all regulations under development or review. The Order also requires that certain agencies prepare annually a regulatory plan of their "most important significant regulatory actions," which appears as part of the fall Unified Agenda. Executive Order 13497, signed January 30, 2009 (74 FR 6113), revoked the amendments to Executive Order 12866 that were contained in Executive Order 13258 and Executive Order 13422.

#### *Executive Order 14094*

Executive Order (E.O.) 14094, "Modernizing Regulatory Review," April 6, 2023 (88 FR 21879) sets forth specific actions for Federal agencies and OIRA designed to modernize the regulatory process in order to advance policies that promote the public interest and address national priorities. E.O. 14094, among other things, amends Section 3(f)(1) of E.O. 12866 (Regulatory Planning and Review) to increase the monetary threshold for significance under that provision, amends Section 3(f)(4) to clarify what is significant under that provision, and encourages greater public participation during all stages of the regulatory process.

#### *Executive Order 13563*

Executive Order 13563, "Improving Regulation and Regulatory Review," January 18, 2011 (76 FR 3821) supplements and reaffirms the

principles, structures, and definitions governing contemporary regulatory review that were established in Executive Order 12866, which includes the general principles of regulation and public participation, and orders integration and innovation in coordination across agencies; flexible approaches where relevant, feasible, and consistent with regulatory approaches; scientific integrity in any scientific or technological information and processes used to support the agencies' regulatory actions; and retrospective analysis of existing regulations.

#### *Executive Order 13132*

Executive Order 13132, "Federalism," August 4, 1999 (64 FR 43255), directs agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications" as defined in the Order. Under the Order, an agency that is proposing a regulation with federalism implications, which either preempt State law or impose non-statutory unfunded substantial direct compliance costs on State and local governments, must consult with State and local officials early in the process of developing the regulation. In addition, the agency must provide to the Director of the Office of Management and Budget a federalism summary impact statement for such a regulation, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which those concerns have been met. As part of this effort, agencies include in their submissions for the Unified Agenda information on whether their regulatory actions may have an effect on the various levels of government and whether those actions have federalism implications.

#### *Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, title II) requires agencies to prepare written assessments of the costs and benefits of significant regulatory actions "that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any 1 year." The requirement does not apply to independent regulatory agencies, nor does it apply to certain subject areas excluded by section 4 of the Act. Affected agencies identify in the Unified Agenda those regulatory actions they believe are subject to title II of the Act.

#### *Executive Order 13211*

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," May 18, 2001 (66 FR 28355), directs agencies to provide, to the extent possible, information regarding the adverse effects that agency actions may have on the supply, distribution, and use of energy. Under the Order, the agency must prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for "those matters identified as significant energy actions." As part of this effort, agencies may optionally include in their submissions for the Unified Agenda information on whether they have prepared or plan to prepare a Statement of Energy Effects for their regulatory actions.

#### *Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121, title II) established a procedure for congressional review of rules (5 U.S.C. 801 *et seq.*), which defers, unless exempted, the effective date of a "major" rule for at least 60 days from the publication of the final rule in the **Federal Register**. The Act specifies that a rule is "major" if it has resulted, or is likely to result, in an annual effect on the economy of \$100 million or more or meets other criteria specified in that Act. The Act provides that the Administrator of OIRA will make the final determination as to whether a rule is major.

### **III. How are the Regulatory Plan and the Unified Agenda organized?**

The Regulatory Plan appears in part II in a daily edition of the **Federal Register**. The Plan is a single document beginning with an introduction, followed by a table of contents, followed by each agency's section of the Plan. Following the Plan in the **Federal Register**, as separate parts, are the Regulatory Flexibility Agendas for each agency whose agenda includes entries for rules which are likely to have a significant economic impact on a substantial number of small entities or rules that have been selected for periodic review under section 610 of the Regulatory Flexibility Act. Each printed agenda appears as a separate part. The sections of the Plan and the parts of the Unified Agenda are organized alphabetically in four groups: Cabinet departments; other executive agencies; the Federal Acquisition Regulation, a

joint authority (Agenda only); and independent regulatory agencies. Agencies may in turn be divided into subagencies. Each printed agency agenda has a table of contents listing the agency's printed entries that follow. Each agency's part of the Agenda contains a preamble providing information specific to that agency. Each printed agency agenda has a table of contents listing the agency's printed entries that follow.

Each agency's section of the Plan contains a narrative statement of regulatory priorities and, for most agencies, a description of the agency's most important significant regulatory and deregulatory actions. Each agency's part of the Agenda contains a preamble providing information specific to that agency plus descriptions of the agency's regulatory and deregulatory actions.

Agency regulatory flexibility agendas are printed in a single daily edition of the **Federal Register**. A regulatory flexibility agenda is printed for each agency whose agenda includes entries for rules which are likely to have a significant economic impact on a substantial number of small entities or rules that have been selected for periodic review under section 610 of the Regulatory Flexibility Act. Each printed agenda appears as a separate part. The parts are organized alphabetically in four groups: Cabinet departments; other executive agencies; the Federal Acquisition Regulation, a joint authority; and independent regulatory agencies. Agencies may in turn be divided into sub-agencies. Each agency's part of the Agenda contains a preamble providing information specific to that agency. Each printed agency agenda has a table of contents listing the agency's printed entries that follow.

The online, complete Unified Agenda contains the preambles of all participating agencies. Unlike the printed edition, the online Agenda has no fixed ordering. In the online Agenda, users can select the particular agencies' agendas they want to see. Users have broad flexibility to specify the characteristics of the entries of interest to them by choosing the desired responses to individual data fields. To see a listing of all of an agency's entries, a user can select the agency without specifying any particular characteristics of entries.

*Each entry in the Agenda is associated with one of five rulemaking stages. The rulemaking stages are:*

1. *Prerule Stage*—actions agencies will undertake to determine whether or how to initiate rulemaking. Such actions occur prior to a Notice of Proposed Rulemaking (NPRM) and may include

Advance Notices of Proposed Rulemaking (ANPRMs) and reviews of existing regulations.

2. *Proposed Rule Stage*—actions for which agencies plan to publish a Notice of Proposed Rulemaking as the next step in their rulemaking process or for which the closing date of the NPRM Comment Period is the next step.

3. *Final Rule Stage*—actions for which agencies plan to publish a final rule or an interim final rule or to take other final action as the next step.

4. *Long-Term Actions*—items under development but for which the agency does not expect to have a regulatory action within the 12 months after publication of this edition of the Unified Agenda. Some of the entries in this section may contain abbreviated information.

5. *Completed Actions*—actions or reviews the agency has completed or withdrawn since publishing its last agenda. This section also includes items the agency began and completed between issues of the Agenda.

*Long-Term Actions* are rulemakings reported during the publication cycle that are outside of the required 12-month reporting period for which the Agenda was intended. Completed Actions in the publication cycle are rulemakings that are ending their lifecycle either by Withdrawal or completion of the rulemaking process. Therefore, the Long-Term and Completed RINs do not represent the ongoing, forward-looking nature intended for reporting developing rulemakings in the Agenda pursuant to Executive Order 12866, section 4(b) and 4(c). To further differentiate these two stages of rulemaking in the Unified Agenda from active rulemakings, Long-Term and Completed Actions are reported separately from active rulemakings, which can be any of the first three stages of rulemaking listed above. A separate search function is provided on [www.reginfo.gov](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 and Section 3(f)(1) Significant

On April 6, 2023, the President issued E.O. 14904 entitled “Modernizing Regulatory Review.” E.O. 14904 amends Section 3(f)(1) of E.O. 12866 to increase the monetary threshold for significance under this provision from \$100 million to \$200 million in annual effects and directs that it be adjusted for GDP growth every three years. For rulemaking actions that were in development prior to the issuance of E.O. 14904, the Agenda largely uses the previous nomenclature of “economically significant” to indicate rulemaking actions expected to have an

annual effect on the economy of \$100 million or more, the threshold in E.O. 12866 prior to April 6, 2023. For rulemaking actions which were submitted for OIRA review after the issuance of the E.O. 14904 on April 6, 2023 and are expected to have an annual effect on the economy of \$200 million or more, the term “Section 3(f)(1) Significant” is used and will continue to be used in future Unified Agendas. The amended definition of “Section 3(f)(1) Significant” under Executive Order 12866 is a rulemaking action that will “have an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of OIRA for changes in gross domestic product); or will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.”

##### (2) Other Significant

A rulemaking that is not Economically Significant but is considered Significant by the agency. This category includes rules that the agency anticipates will be reviewed under Executive Order 12866, as amended, or rules that are a priority of the agency head. These rules may or may not be included in the agency's regulatory plan.

##### (3) Substantive, Nonsignificant

A rulemaking that has substantive impacts, but is neither Significant, nor Routine and Frequent, nor Informational/Administrative/Other.

##### (4) Routine and Frequent

A rulemaking that is a specific case of a multiple recurring application of a regulatory program in the Code of Federal Regulations and that does not alter the body of the regulation.

##### (5) Informational/Administrative/Other

A rulemaking that is primarily informational or pertains to agency matters not central to accomplishing the agency's regulatory mandate but that the agency places in the Unified Agenda to inform the public of the activity.

*Major*—whether the rule is “major” under 5 U.S.C. 801 (Pub. L. 104–121) because it has resulted or is likely to result in an annual effect on the economy of \$100 million or more or meets other criteria specified in that Act. The Act provides that the Administrator of the Office of Information and Regulatory Affairs will make the final determination as to whether a rule is major.

**Unfunded Mandates**—whether the rule is covered by section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). The Act requires that, before issuing an NPRM likely to result in a mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of more than \$100 million in 1 year, agencies, other than independent regulatory agencies, shall prepare a written statement containing an assessment of the anticipated costs and benefits of the Federal mandate.

**Legal Authority**—the section(s) of the United States Code (U.S.C.) or Public Law (Pub. L.) or the Executive order (E.O.) that authorize(s) the regulatory action. Agencies may provide popular name references to laws in addition to these citations.

**CFR Citation**—the section(s) of the Code of Federal Regulations that will be affected by the action.

**Legal Deadline**—whether the action is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to an NPRM, a Final Action, or some other action.

**Abstract**—a brief description of the problem the regulation will address; the need for a Federal solution; to the extent available, alternatives that the agency is considering to address the problem; and potential costs and benefits of the action.

**Timetable**—the dates and citations (if available) for all past steps and a projected date for at least the next step for the regulatory action. A date displayed in the form 12/00/19 means the agency is predicting the month and year the action will take place but not the day it will occur. In some instances, agencies may indicate what the next action will be, but the date of that action is “To Be Determined.” “Next Action Undetermined” indicates the agency does not know what action it will take next.

**Regulatory Flexibility Analysis Required**—whether an analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rulemaking action is likely to have a significant economic impact on a substantial number of small entities as defined by the Act.

**Small Entities Affected**—the types of small entities (businesses, governmental jurisdictions, or organizations) on which the rulemaking action is likely to have an impact as defined by the Regulatory Flexibility Act. Some agencies have chosen to indicate likely effects on small entities even though they believe that a Regulatory Flexibility Analysis will not be required.

**Government Levels Affected**—whether the action is expected to affect levels of government and, if so, whether the governments are State, local, tribal, or Federal.

**International Impacts**—whether the regulation is expected to have international trade and investment effects, or otherwise may be of interest to the Nation’s international trading partners.

**Federalism**—whether the action has “federalism implications” as defined in Executive Order 13132. This term refers to actions “that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

Independent regulatory agencies are not required to supply this information.

**Included in the Regulatory Plan**—whether the rulemaking was included in the agency’s current regulatory plan published in the fall 2022.

**Agency Contact**—the name and phone number of at least one person in the agency who is knowledgeable about the rulemaking action. The agency may also provide the title, address, fax number, email address, and TDD for each agency contact.

*Some agencies have provided the following optional information:*

**RIN Information URL**—the internet address of a site that provides more information about the entry.

**Public Comment URL**—the internet address of a site that will accept public comments on the entry.

Alternatively, timely public comments may be submitted at the Governmentwide e-rulemaking site, [www.regulations.gov](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.

**Public Law**—A public law is a law passed by Congress and signed by the President or enacted over his veto. It has general applicability, unlike a private law that applies only to those persons or entities specifically designated. Public laws are numbered in sequence throughout the 2-year life of each Congress; for example, Public Law 112–4 is the fourth public law of the 112th Congress.

**RFA**—A Regulatory Flexibility Analysis is a description and analysis of the impact of a rule on small entities, including small businesses, small governmental jurisdictions, and certain

small not-for-profit organizations. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each agency to prepare an initial RFA for public comment when it is required to publish an NPRM and to make available a final RFA when the final rule is published, unless the agency head certifies that the rule would not have a significant economic impact on a substantial number of small entities.

**RIN**—The Regulation Identifier Number is assigned by the Regulatory Information Service Center to identify each regulatory action listed in the Regulatory Plan and the Unified Agenda, as directed by Executive Order 12866 (section 4(b)). Additionally, OMB has asked agencies to include RINs in the headings of their Rule and Proposed Rule documents when publishing them in the **Federal Register**, to make it easier for the public and agency officials to track the publication history of regulatory actions throughout their development.

**Seq. No.**—The sequence number identifies the location of an entry in the printed edition of the Regulatory Plan and the Unified Agenda. Note that a specific regulatory action will have the same RIN throughout its development but will generally have different sequence numbers if it appears in different printed editions of the Unified Agenda. Sequence numbers are not used in the online Unified Agenda.

**U.S.C.**—The United States Code is a consolidation and codification of all general and permanent laws of the United States. The U.S.C. is divided into 50 titles, each title covering a broad area of Federal law.

## VI. How can users get copies of the Unified Agenda?

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**Boris Arratia**,  
Director.

## DEPARTMENT OF AGRICULTURE

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
1 .....	Unfair Practices, Undue Preferences, and Harm to Competition Under the Packers and Stockyards Act (AMS–FTPP–21–0046).	0581–AE04	Proposed Rule Stage.
2 .....	Inclusive Competition and Market Integrity Under the Packers and Stockyards Act (AMS–FTPP–21–0045).	0581–AE05	Final Rule Stage.
3 .....	Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages.	0584–AE82	Final Rule Stage.
4 .....	Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans.	0584–AE88	Final Rule Stage.
5 .....	Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Implementation of the Access to Baby Formula Act of 2022 and Related Provisions.	0584–AE94	Final Rule Stage.
6 .....	Interim Final Rule—Implementing Provisions From the Consolidated Appropriations Act, 2023: Establishing the Summer EBT Program and Non-Congregate Option in the Summer Food Service Program.	0584–AE96	Final Rule Stage.
7 .....	Labeling of Meat and Poultry Products Made Using Animal Cell Culture Technology.	0583–AD89	Proposed Rule Stage.
8 .....	Salmonella Framework .....	0583–AD96	Proposed Rule Stage.
9 .....	Revision of the Nutrition Facts Labels for Meat and Poultry Products and Updating Certain Reference Amounts Customarily Consumed.	0583–AD56	Final Rule Stage.
10 .....	Voluntary Labeling of FSIS-Regulated Products With U.S. Origin Claims .....	0583–AD87	Final Rule Stage.
11 .....	Update and Clarification of the Locatable Minerals Regulations .....	0596–AD32	Proposed Rule Stage.
12 .....	Higher Blends Infrastructure Incentive Program .....	0570–AB11	Proposed Rule Stage.

## DEPARTMENT OF COMMERCE

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
13 .....	Illegal, Unreported, and Unregulated Fishing; Fisheries Enforcement; High Seas Driftnet Fishing Moratorium Protection Act.	0648–BG11	Proposed Rule Stage.
14 .....	Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule .....	0648–BI88	Final Rule Stage.
15 .....	Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat.	0648–BK47	Final Rule Stage.
16 .....	Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation.	0648–BK48	Final Rule Stage.
17 .....	Setting and Adjusting Patent Fees .....	0651–AD64	Proposed Rule Stage.
18 .....	Setting and Adjusting Trademark Fees .....	0651–AD65	Proposed Rule Stage.

## DEPARTMENT OF DEFENSE

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
19 .....	Cybersecurity Maturity Model Certification (CMMC) Program .....	0790–AL49	Proposed Rule Stage.
20 .....	Department of Defense (DoD)-Defense Industrial Base (DIB) Cybersecurity (CS) Activities.	0790–AK86	Final Rule Stage.
21 .....	Definitions of Gold Star Family and Gold Star Survivor .....	0790–AL56	Final Rule Stage.
22 .....	Nondiscrimination on the Basis of Disability in Programs or Activities Assisted or Conducted by the DoD and in Equal Access to Information and Communication Technology Used by DoD.	0790–AJ04	Long-Term Actions.
23 .....	Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019–D041).	0750–AK81	Proposed Rule Stage.
24 .....	Modification of Prize Authority For Advanced Technology Achievements (DFARS Case 2022–D014).	0750–AL65	Proposed Rule Stage.
25 .....	Past Performance of Subcontractors and Joint Venture Partners (DFARS Case 2018–D055).	0750–AK16	Final Rule Stage.
26 .....	Small Business Innovation Research Program Data Rights (DFARS Case 2019–D043).	0750–AK84	Final Rule Stage.
27 .....	DFARS Buy American Act Requirements (DFARS Case 2022–D019) .....	0750–AL74	Final Rule Stage.
28 .....	Policy and Procedures for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 U.S.C. 408.	0710–AB22	Proposed Rule Stage.
29 .....	Flood Control Cost-Sharing Requirements Under the Ability to Pay Provision .....	0710–AB34	Proposed Rule Stage.
30 .....	USACE Implementing Procedures for Principles, Requirements, and Guidelines Applicable to Actions Involving Investment in Water Resources.	0710–AB41	Proposed Rule Stage.
31 .....	Appendix C Procedures for the Protection of Historic Properties .....	0710–AB46	Proposed Rule Stage.
32 .....	Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers.	0710–AA78	Final Rule Stage.
33 .....	Credit Assistance for Water Resources Infrastructure Projects .....	0710–AB31	Completed Actions.
34 .....	Revised Definition of “Waters of the United States”; Conforming .....	0710–AB55	Completed Actions.
35 .....	TRICARE Coverage of Clinical Trials and Termination of Expanded Access Treatments.	0720–AB83	Final Rule Stage.
36 .....	Expanding TRICARE Access to Care in Response to the COVID–19 Pandemic ..	0720–AB85	Final Rule Stage.
37 .....	Collection From Third Party Payers of Reasonable Charges for Healthcare Services; Amendment.	0720–AB87	Final Rule Stage.

## DEPARTMENT OF EDUCATION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
38 .....	Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.	1870–AA16	Final Rule Stage.
39 .....	Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria For Male and Female Athletic Teams.	1870–AA19	Final Rule Stage.
40 .....	EDGAR Revisions .....	1875–AA14	Proposed Rule Stage.
41 .....	Family Educational Rights and Privacy Act .....	1875–AA15	Proposed Rule Stage.
42 .....	Student Loan Relief .....	1840–AD93	Proposed Rule Stage.
43 .....	Gainful Employment .....	1840–AD57	Completed Actions.
44 .....	Improving Income Driven Repayment .....	1840–AD81	Completed Actions.

## DEPARTMENT OF ENERGY

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
45 .....	Clean Energy for New Federal Buildings and Major Renovations of Federal Buildings.	1904–AB96	Final Rule Stage.
46 .....	Energy Conservation Standards for Consumer Water Heaters .....	1904–AD91	Final Rule Stage.
47 .....	Coordination of Federal Authorizations for Electric Transmission Facilities .....	1901–AB62	Final Rule Stage.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
48 .....	Rulemaking on Discrimination on the Basis of Disability in Health and Human Services Programs or Activities.	0945–AA15	Proposed Rule Stage.
49 .....	Proposed Modifications to the HIPAA Security Rule to Strengthen the Cybersecurity of Electronic Protected Health Information.	0945–AA22	Proposed Rule Stage.
50 .....	Confidentiality of Substance Use Disorder Patient Records .....	0945–AA16	Final Rule Stage.
51 .....	Nondiscrimination in Health Programs and Activities .....	0945–AA17	Final Rule Stage.
52 .....	Safeguarding the Rights of Conscience as Protected by Federal Statutes .....	0945–AA18	Final Rule Stage.
53 .....	Health and Human Services Grants Regulation .....	0945–AA19	Final Rule Stage.
54 .....	Proposed Modifications to the HIPAA Privacy Rule to Support Reproductive Health Care Privacy.	0945–AA20	Final Rule Stage.
55 .....	Establishment of Disincentives for Health Care Providers Who Have Committed Information Blocking.	0955–AA05	Proposed Rule Stage.
56 .....	Control of Communicable Diseases; Foreign Quarantine .....	0920–AA75	Final Rule Stage.
57 .....	Tobacco Product Standard for Nicotine Level of Certain Tobacco Products .....	0910–AI76	Proposed Rule Stage.
58 .....	Front-of-Package Nutrition Labeling .....	0910–AI80	Proposed Rule Stage.
59 .....	Medical Devices; Laboratory Developed Tests .....	0910–AI85	Proposed Rule Stage.
60 .....	Nonprescription Drug Product With an Additional Condition for Nonprescription Use.	0910–AH62	Final Rule Stage.
61 .....	Nutrient Content Claims, Definition of Term: Healthy .....	0910–AI13	Final Rule Stage.
62 .....	Tobacco Product Standard for Characterizing Flavors in Cigars .....	0910–AI28	Final Rule Stage.
63 .....	Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption Relating to Agricultural Water.	0910–AI49	Final Rule Stage.
64 .....	Tobacco Product Standard for Menthol in Cigarettes .....	0910–AI60	Final Rule Stage.
65 .....	Countermeasures Injury Compensation Program: COVID–19 Countermeasures Injury Table.	0906–AB31	Proposed Rule Stage.
66 .....	340B Drug Pricing Program; Administrative Dispute Resolution .....	0906–AB28	Final Rule Stage.
67 .....	Healthcare System Resiliency and Modernization (CMS–3426) .....	0938–AU91	Proposed Rule Stage.
68 .....	Appeal Rights for Certain Changes in Patient Status (CMS–4204) .....	0938–AV16	Proposed Rule Stage.
69 .....	Contract Year 2025 Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, and Medicare Cost Plan Programs, and PACE (CMS–4205).	0938–AV24	Proposed Rule Stage.
70 .....	Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting (CMS–3442).	0938–AV25	Proposed Rule Stage.
71 .....	Streamlining the Medicaid, CHIP, and BHP Application, Eligibility Determination, Enrollment, and Renewal Processes (CMS–2421).	0938–AU00	Final Rule Stage.
72 .....	Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance (CMS–9904).	0938–AU67	Final Rule Stage.
73 .....	Ensuring Access to Medicaid Services (CMS–2442) .....	0938–AU68	Final Rule Stage.
74 .....	Coverage of Certain Preventive Services Under the Affordable Care Act (CMS–9903).	0938–AU94	Final Rule Stage.
75 .....	Medicaid and Children’s Health Insurance Program (CHIP) Managed Care Access, Finance, and Quality (CMS–2439).	0938–AU99	Final Rule Stage.
76 .....	Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities (CMS–6084).	0938–AU90	Long-Term Actions.
77 .....	Hospital Outpatient Prospective Payment System: Remedy for 340B-Acquired Drugs Purchased in Cost Years 2018–2022 (CMS–1793).	0938–AV18	Completed Actions.
78 .....	Strengthening Temporary Assistance for Needy Families (TANF) as a Safety Net Program.	0970–AC97	Proposed Rule Stage.
79 .....	Employment and Training Services for Noncustodial Parents in the Child Support Services Program.	0970–AD00	Proposed Rule Stage.
80 .....	Supporting the Head Start Workforce and Other Quality Improvements .....	0970–AD01	Proposed Rule Stage.
81 .....	Safe and Appropriate Foster Care Placement Requirements for Titles IV–E and IV–B.	0970–AD03	Proposed Rule Stage.
82 .....	Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF).	0970–AD02	Final Rule Stage.
83 .....	Separate Licensing Standards for Relative or Kinship Foster Family Homes .....	0970–AC91	Completed Actions.
84 .....	Adult Protective Services Functions and Grant Programs .....	0985–AA18	Proposed Rule Stage.



## DEPARTMENT OF HOMELAND SECURITY

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
85 .....	Victims of Qualifying Criminal Activities; Eligibility Requirements for U Non-immigrant Status and Adjustment of Status.	1615-AA67	Proposed Rule Stage.
86 .....	Improving the Regulations Governing the Adjustment of Status to Lawful Permanent Residence and Related Immigration Benefits.	1615-AC22	Proposed Rule Stage.
87 .....	Asylum Eligibility and Public Health .....	1615-AC57	Proposed Rule Stage.
88 .....	Clarifying Definitions and Analyses for Fair and Efficient Asylum and Other Protection Determinations.	1615-AC65	Proposed Rule Stage.
89 .....	Procedures for Asylum and Bars to Asylum Eligibility .....	1615-AC69	Proposed Rule Stage.
90 .....	Modernizing H-1B Requirements and Oversight, Providing Flexibility in the F-1 Program, and Program Improvements Affecting Other Nonimmigrant Workers.	1615-AC70	Proposed Rule Stage.
91 .....	Modernizing H-2 Program Requirements, Oversight, and Worker Protections .....	1615-AC76	Proposed Rule Stage.
92 .....	Citizenship and Naturalization and Other Related Flexibilities .....	1615-AC80	Proposed Rule Stage.
93 .....	U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements.	1615-AC68	Final Rule Stage.
94 .....	Shipping Safety Fairways Along the Atlantic Coast .....	1625-AC57	Proposed Rule Stage.
95 .....	Cybersecurity in the Marine Transportation System .....	1625-AC77	Proposed Rule Stage.
96 .....	MARPOL Annex VI; Prevention of Air Pollution From Ships .....	1625-AC78	Proposed Rule Stage.
97 .....	Advance Passenger Information System: Electronic Validation of Travel Documents.	1651-AB43	Final Rule Stage.
98 .....	Enhancing Surface Cyber Risk Management .....	1652-AA74	Proposed Rule Stage.
99 .....	Flight Training Security Program .....	1652-AA35	Final Rule Stage.
100 .....	Frequency of Renewal Cycle for Indirect Air Carrier Security Programs .....	1652-AA72	Final Rule Stage.
101 .....	Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Waiver for Mobile Driver's Licenses.	1652-AA76	Final Rule Stage.
102 .....	Clarifying and Revising Custody Determination and Detention Classification Procedures.	1653-AA92	Proposed Rule Stage.
103 .....	National Flood Insurance Program: Standard Flood Insurance Policy, Homeowner Flood Form.	1660-AB06	Proposed Rule Stage.
104 .....	Update of FEMA's Public Assistance Regulations .....	1660-AB09	Proposed Rule Stage.
105 .....	Updates to Floodplain Management and Protection of Wetlands Regulations to Implement the Federal Flood Risk Management Standard.	1660-AB12	Proposed Rule Stage.
106 .....	Individual Assistance Program Equity .....	1660-AB07	Final Rule Stage.
107 .....	National Flood Insurance Program's Floodplain Management Standards for Land Management & Use, & an Assessment of the Program's Impact on Threatened and Endangered Species & Their Habitats.	1660-AB11	Long-Term Actions.

## DEPARTMENT OF THE INTERIOR

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
108 .....	ONRR Designation Form for Payment Responsibility .....	1012-AA33	Proposed Rule Stage.
109 .....	Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line Proposed Rule.	1014-AA44	Proposed Rule Stage.
110 .....	Revisions to Subpart J—Pipelines and Pipeline Rights-of-Way Proposed Rule .....	1014-AA45	Proposed Rule Stage.
111 .....	Outer Continental Shelf Lands Act; Operating in High-Pressure and/or High-Temperature (HPHT) Environments.	1014-AA49	Final Rule Stage.
112 .....	Carbon Sequestration .....	1082-AA04	Proposed Rule Stage.
113 .....	Department of the Interior Acquisition Regulation Governance Titles .....	1090-AB25	Proposed Rule Stage.
114 .....	Natural Resource Damages for Hazardous Substances .....	1090-AB26	Proposed Rule Stage.
115 .....	Privacy Act Exemption for INTERIOR/DOI-10, DOI Law Enforcement Records Management System (LERMS).	1090-AB28	Proposed Rule Stage.
116 .....	Privacy Act Exemption for INTERIOR/OIG-02 Investigative Records .....	1090-AB27	Final Rule Stage.
117 .....	Office of Hearings and Appeals (OHA) Rule .....	1094-AA57	Proposed Rule Stage.
118 .....	Wildlife and Fisheries; Compensatory Mitigation Mechanisms .....	1018-BF63	Proposed Rule Stage.
119 .....	Migratory Bird Permits; Authorizing the Incidental Take of Migratory Birds, Proposed Rule.	1018-BF71	Proposed Rule Stage.
120 .....	Maintaining the Biological Integrity, Diversity, and Environmental Health of the National Wildlife Refuge System, Proposed rule.	1018-BG78	Proposed Rule Stage.
121 .....	Permits for Incidental Take of Eagles and Eagle Nests, Final Rule .....	1018-BE70	Final Rule Stage.
122 .....	Regulations Pertaining to Endangered and Threatened Wildlife and Plants .....	1018-BF88	Final Rule Stage.
123 .....	Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat, Final Rule.	1018-BF95	Final Rule Stage.
124 .....	Endangered and Threatened Wildlife and Plants; Interagency Cooperation .....	1018-BF96	Final Rule Stage.
125 .....	Endangered Species Act Section 10 Regulations; Enhancement of Survival and Incidental Take Permits, Final rule.	1018-BF99	Final Rule Stage.
126 .....	Revision to the Section 4(d) Rule for the African Elephant, Final rule .....	1018-BG66	Final Rule Stage.
127 .....	Establishment of a Nonessential Experimental Population of the Gray Wolf in the State of Colorado, Final Rule.	1018-BG79	Final Rule Stage.

## DEPARTMENT OF THE INTERIOR—Continued

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
128 .....	National Wildlife Refuge System; Station-Specific Hunting and Sport Fishing Regulations, 2023–24, Final rule.	1018–BG71	Completed Actions.
129 .....	Native American Graves Protection and Repatriation Act Regulations .....	1024–AE19	Final Rule Stage.
130 .....	Alaska; Hunting and Trapping in National Preserves .....	1024–AE70	Final Rule Stage.
131 .....	Agricultural Leasing of Indian Land .....	1076–AF66	Proposed Rule Stage.
132 .....	Procedures for Federal Acknowledgment of Indian Tribes .....	1076–AF67	Proposed Rule Stage.
133 .....	Indian Arts and Crafts .....	1076–AF69	Proposed Rule Stage.
134 .....	Mining of the Osage Mineral Estate for Oil and Gas .....	1076–AF59	Final Rule Stage.
135 .....	Class III Tribal State Gaming Compact Process .....	1076–AF68	Final Rule Stage.
136 .....	Land Acquisitions .....	1076–AF71	Final Rule Stage.
137 .....	Fitness to Operate Standards for Oil and Gas Operators and Lessees on the Outer Continental Shelf.	1010–AE21	Proposed Rule Stage.
138 .....	Renewable Energy Modernization Rule .....	1010–AE04	Final Rule Stage.
139 .....	Protection of Marine Archaeological Resources .....	1010–AE11	Final Rule Stage.
140 .....	Risk Management and Financial Assurance for OCS Lease and Grant Obligations.	1010–AE14	Final Rule Stage.
141 .....	Emergency Preparedness for Impoundments .....	1029–AC82	Proposed Rule Stage.
142 .....	Ten-Day Notices .....	1029–AC81	Final Rule Stage.
143 .....	Public Conduct on Bureau of Reclamation Facilities, Lands and Waterbodies .....	1006–AA58	Final Rule Stage.
144 .....	Closure and Restriction Orders .....	1004–AE89	Proposed Rule Stage.
145 .....	Management and Protection of the National Petroleum Reserve in Alaska .....	1004–AE95	Proposed Rule Stage.
146 .....	Update of the Communications Uses Program, Right-of-Way Cost Recovery Fee Schedules and Section 512 of FLPMA for Rights-of-Way.	1004–AE60	Final Rule Stage.
147 .....	Rights-of-Way, Leasing and Operations for Renewable Energy .....	1004–AE78	Final Rule Stage.
148 .....	Waste Prevention, Production Subject to Royalties, and Resource Conservation	1004–AE79	Final Rule Stage.
149 .....	Fluid Mineral Leases and Leasing Process .....	1004–AE80	Final Rule Stage.
150 .....	Conservation and Landscape Health .....	1004–AE92	Final Rule Stage.

## DEPARTMENT OF JUSTICE

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
151 .....	Implementation of the ADA Amendments Act of 2008: Federally Conducted (Section 504 of the Rehabilitation Act of 1973).	1190–AA73	Proposed Rule Stage.
152 .....	Nondiscrimination on the Basis of Disability by State and Local Governments; Public Right-of-Way.	1190–AA77	Proposed Rule Stage.
153 .....	Nondiscrimination on the Basis of Disability by State and Local Governments: Medical Diagnostic Equipment.	1190–AA78	Proposed Rule Stage.
154 .....	Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Government Entities.	1190–AA79	Final Rule Stage.
155 .....	Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have not had a Prior In-Person Medical Evaluation.	1117–AB40	Proposed Rule Stage.
156 .....	Import/Export and Domestic Transactions of Tableting and Encapsulating Machines.	1117–AB80	Proposed Rule Stage.
157 .....	Clarifying Definitions and Analyses for Fair and Efficient Asylum and Other Protection Determinations.	1125–AB13	Proposed Rule Stage.
158 .....	Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure.	1125–AB18	Proposed Rule Stage.
159 .....	Hearing Requirements and Application Procedures for Asylum and Related Protection.	1125–AB22	Proposed Rule Stage.
160 .....	Clarifying and Revising Custody Determination Procedures for Noncitizens Subject to Discretionary Detention (INA 236(a)/8 U.S.C. 1226 detention).	1125–AB27	Proposed Rule Stage.

## DEPARTMENT OF LABOR

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
161 .....	Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees.	1235–AA39	Proposed Rule Stage.
162 .....	Nondisplacement of Qualified Workers Under Service Contracts .....	1235–AA42	Final Rule Stage.
163 .....	Employee or Independent Contractor Classification Under the Fair Labor Standards Act.	1235–AA43	Final Rule Stage.
164 .....	Improving Protections For Workers in Temporary Agricultural Employment in the United States.	1205–AC12	Proposed Rule Stage.
165 .....	National Apprenticeship System Enhancements .....	1205–AC13	Proposed Rule Stage.
166 .....	Wagner-Peyser Act Staffing .....	1205–AC02	Final Rule Stage.
167 .....	Retirement Security Rule: Definition of an Investment Advice Fiduciary .....	1210–AC02	Proposed Rule Stage.

## DEPARTMENT OF LABOR—Continued

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
168 .....	Mental Health Parity and Addiction Equity Act and the Consolidated Appropriations Act, 2021.	1210–AC11	Proposed Rule Stage.
169 .....	Definition of 'Employer' Under Section 3(5) of ERISA-Association Health Plans ...	1210–AC16	Proposed Rule Stage.
170 .....	Coverage of Certain Preventive Services Under the Affordable Care Act .....	1210–AC13	Final Rule Stage.
171 .....	Respirable Crystalline Silica .....	1219–AB36	Final Rule Stage.
172 .....	Safety Program for Surface Mobile Equipment .....	1219–AB91	Final Rule Stage.
173 .....	Heat Illness Prevention in Outdoor and Indoor Work Settings .....	1218–AD39	Prerule Stage.
174 .....	Infectious Diseases .....	1218–AC46	Proposed Rule Stage.
175 .....	Emergency Response .....	1218–AC91	Proposed Rule Stage.

## DEPARTMENT OF TRANSPORTATION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
176 .....	Safety Management Systems .....	2120–AL60	Final Rule Stage.

## DEPARTMENT OF VETERANS AFFAIRS

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
177 .....	Updating VA Adjudication Regulations for Disability or Death Benefit Claims Related to Herbicide Exposure.	2900–AR10	Proposed Rule Stage.
178 .....	Expanding Veterans Cemetery Grant Program (VCGP) Grants to Include Training Costs.	2900–AR47	Proposed Rule Stage.
179 .....	Technical Revisions to Expand Health Care for Certain Toxic Exposure and Overseas Contingency Service.	2900–AR73	Proposed Rule Stage.
180 .....	Updating VA Adjudication Regulations for Disability or Death Benefits Based on Toxic Exposure.	2900–AR75	Proposed Rule Stage.
181 .....	Evidence Requirements for Direct Service Connection of Covered Mental Health Conditions Based on In-Service Personal Trauma.	2900–AR91	Proposed Rule Stage.
182 .....	Amendments to the Caregivers Program .....	2900–AR96	Proposed Rule Stage.
183 .....	Revision of Veterans Community Care Program (VCCP) Access Standards .....	2900–AS00	Proposed Rule Stage.
184 .....	Modifying Copayments for Veterans at High Risk for Suicide .....	2900–AQ30	Final Rule Stage.
185 .....	Update and Clarify Regulatory Bars to Benefits Based on Character of Discharge	2900–AQ95	Final Rule Stage.
186 .....	Veteran and Spouse Transitional Assistance Grant Program .....	2900–AR68	Final Rule Stage.
187 .....	Reevaluation of Claims for Dependency and Indemnity Compensation Based on Public Law 117–168.	2900–AR76	Final Rule Stage.
188 .....	Presumptive Service Connection for Respiratory Conditions Due to Exposure to Particulate Matter.	2900–AR25	Completed Actions.
189 .....	Presumptive Service Connection for Rare Respiratory Cancers Due to Exposure to Fine Particulate Matter.	2900–AR44	Completed Actions.

## ENVIRONMENTAL PROTECTION AGENCY

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
190 .....	Review of the Secondary National Ambient Air Quality Standards for Ecological Effects of Oxides of Nitrogen, Oxides of Sulfur and Particulate Matter.	2060–AS35	Proposed Rule Stage.
191 .....	NSPS for GHG Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired EGUs; Emission Guidelines for GHG Emissions From Existing Fossil Fuel-Fired EGUs; and Repeal of the ACE Rule.	2060–AV09	Proposed Rule Stage.
192 .....	Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act.	2060–AV20	Proposed Rule Stage.
193 .....	Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under Subsection (h) of the American Innovation and Manufacturing Act of 2020.	2060–AV84	Proposed Rule Stage.
194 .....	Phasedown of Hydrofluorocarbons: Review and Renewal of Eligibility for Application-specific Allowances.	2060–AV98	Proposed Rule Stage.
195 .....	1-Bromopropane (1-BP); Regulation Under the Toxic Substances Control Act (TSCA).	2070–AK73	Proposed Rule Stage.
196 .....	Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA) ...	2070–AK83	Proposed Rule Stage.
197 .....	N-Methylpyrrolidone (NMP); Regulation Under the Toxic Substances Control Act (TSCA).	2070–AK85	Proposed Rule Stage.
198 .....	Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA).	2070–AK90	Proposed Rule Stage.

## ENVIRONMENTAL PROTECTION AGENCY—Continued

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
199 .....	Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives.	2050–AH24	Proposed Rule Stage.
200 .....	Listing of PFOA, PFOS, PFBS, and GenX as Resource Conservation and Recovery Act (RCRA) Hazardous Constituents.	2050–AH26	Proposed Rule Stage.
201 .....	Definition of Hazardous Waste Applicable to Corrective Action for Solid Waste Management Units.	2050–AH27	Proposed Rule Stage.
202 .....	National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI).	2040–AG16	Proposed Rule Stage.
203 .....	National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations.	2060–AU37	Final Rule Stage.
204 .....	New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review.	2060–AV16	Final Rule Stage.
205 .....	Revisions to the Air Emission Reporting Requirements (AERR) .....	2060–AV41	Final Rule Stage.
206 .....	Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles.	2060–AV49	Final Rule Stage.
207 .....	Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3 .....	2060–AV50	Final Rule Stage.
208 .....	Reconsideration of the National Ambient Air Quality Standards for Particulate Matter.	2060–AV52	Final Rule Stage.
209 .....	NESHAP: Coal-and Oil-Fired Electric Utility Steam Generating Units-Review of the Residual Risk and Technology Review.	2060–AV53	Final Rule Stage.
210 .....	NSPS for the Synthetic Organic Chemical Manufacturing Industry and NESHAP for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry.	2060–AV71	Final Rule Stage.
211 .....	Methylene Chloride (MC); Regulation Under the Toxic Substances Control Act (TSCA).	2070–AK70	Final Rule Stage.
212 .....	Carbon Tetrachloride (CTC); Regulation Under the Toxic Substances Control Act (TSCA).	2070–AK82	Final Rule Stage.
213 .....	Perchloroethylene (PCE); Regulation Under the Toxic Substances Control Act (TSCA).	2070–AK84	Final Rule Stage.
214 .....	Asbestos Part 1 (Chrysotile Asbestos); Regulation of Certain Conditions of Use Under the Toxic Substances Control Act (TSCA).	2070–AK86	Final Rule Stage.
215 .....	Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post Abatement Clearance Levels.	2070–AK91	Final Rule Stage.
216 .....	Designating PFOA and PFOS as CERCLA Hazardous Substances .....	2050–AH09	Final Rule Stage.
217 .....	Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy Surface Impoundments.	2050–AH14	Final Rule Stage.
218 .....	Clean Water Act Hazardous Substance Facility Response Plans .....	2050–AH17	Final Rule Stage.
219 .....	Accidental Release Prevention Requirements: Risk Management Program Under the Clean Air Act; Safer Communities by Chemical Accident Prevention.	2050–AH22	Final Rule Stage.
220 .....	Federal Baseline Water Quality Standards for Indian Reservations .....	2040–AF62	Final Rule Stage.
221 .....	Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights	2040–AG17	Final Rule Stage.
222 .....	PFAS National Primary Drinking Water Regulation Rulemaking .....	2040–AG18	Final Rule Stage.
223 .....	Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category.	2040–AG23	Final Rule Stage.

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
224 .....	Regulations to Implement the Pregnant Workers Fairness Act .....	3046–AB30	Final Rule Stage.

## PENSION BENEFIT GUARANTY CORPORATION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
225 .....	Actuarial Assumptions for Determining an Employer's Withdrawal Liability .....	1212–AB54	Final Rule Stage.

## SOCIAL SECURITY ADMINISTRATION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
226 .....	Omitting Food From In-Kind Support and Maintenance Calculations .....	0960–AI60	Final Rule Stage.
227 .....	Expand the Definition of a Public Assistance (PA) Household .....	0960–AI81	Final Rule Stage.
228 .....	Nationwide Expansion of the Rental Subsidy Policy for SSI Recipients .....	0960–AI82	Final Rule Stage.

SOCIAL SECURITY ADMINISTRATION—Continued

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
229 .....	Intermediate Improvement to the Disability Adjudication Process, Including How we Consider Past Work.	0960–AI83	Final Rule Stage.

CONSUMER PRODUCT SAFETY COMMISSION

Sequence No.	Title	Regulation Identifier No.	Rulemaking stage
230 .....	Regulatory Options for Table Saws .....	3041–AC31	Proposed Rule Stage.
231 .....	Safety Standard for Residential Gas Furnaces and Boilers .....	3041–AD70	Proposed Rule Stage.
232 .....	Portable Generators .....	3041–AC36	Final Rule Stage.

Introduction to the Fall 2023  
Regulatory Plan

Executive Order 12866, issued in 1993, requires the annual production of a Unified Regulatory Agenda and Regulatory Plan. It does so in order to promote transparency—or in the words of the Executive Order itself, “to have an effective regulatory program, to provide for coordination of regulations, to maximize consultation and the resolution of potential conflicts at an early stage, to involve the public and its State, local, and tribal officials in regulatory planning, and to ensure that new or revised regulations promote the President’s priorities and the principles set forth in this Executive order.” Executive Order 13563, issued in 2011, and Executive Order 14094, issued in 2023, reaffirmed and amended the requirements of Executive Order 12866.

We are now providing the Fall 2023 Regulatory Plan. The regulatory plans and agendas submitted by agencies and included here offer a window into how the Administration plans to continue delivering on the President’s agenda to advance economic prosperity and equity, tackle the climate crisis, advance public health, and much more to improve the lives of the American people. Agencies will be continuing their work to implement landmark legislation passed during this Administration, including the implementation of the PACT Act, (Pub. L. 117–168); the Inflation Reduction Act, (Pub. L. 117–169); and the CHIPS and Science Act, (Pub. L. 117–167); as well as ongoing efforts to implement the Infrastructure Investment and Jobs Act (Bipartisan Infrastructure Law), Public Law 117–58. Agencies have also highlighted in their plans and agendas how they have engaged with the public in developing regulatory priorities, as well as future opportunities for engagement.

DEPARTMENT OF AGRICULTURE  
Statement of Regulatory Priorities

In 2024, the U.S. Department of Agriculture (USDA) plans to prioritize initiatives that promote growth and new market opportunity in Rural America for our farmers, ranchers, small businesses, and communities, particularly among historically underserved communities, while implementing an expected new 5 year Farm Bill reauthorization for our major agricultural and food programs. USDA further anticipates a Farm Bill reauthorization as an opportunity to strengthen and improve our customer service and delivery combined with IT modernization that fosters 21st century innovation. USDA will use available outreach and communication tools to seek input and engagement from our traditional stakeholders as well as those communities whom we may not have been able to reach in the past but who, like our traditional stakeholders, offer critical implementation input and feedback. In short, we want to know what works, and what doesn’t work, from everyone.

In 2024, USDA will seek and promote 21st century innovation initiatives like carbon capture and storage, addressing the effects of climate change such as drought and wildfire risks, and other climate-smart agriculture initiatives. As in the past, USDA will continue to tackle food and nutrition insecurity while maintaining a safe food supply and responding to any disaster and emergency threats impacting the American Farm economy, schools, individual households, and our National Forests. Finally, all of USDA’s programs, including the priorities contained in this Regulatory Plan, will be structured to advance the cause of equity by removing barriers and opening new opportunities for our customers.

In 2023, the USDA:  
Agricultural Marketing Service published the *Strengthening Organic*

*Enforcement* (SOE) final rule (January 19, 2023, 88 FR 3548) that became effective on March 20, 2023. As required by the 2018 Farm Bill, SOE protects organic integrity and bolsters farmer and consumer confidence in the USDA organic seal by supporting strong organic control systems, improving farm to market traceability, increasing import oversight authority, and providing robust enforcement of the organic regulations. Topics addressed in this rulemaking include: National Organic Program Import Certificates; recordkeeping and product traceability; certifying agent personnel qualifications and training; standardized certificates of organic operation; unannounced on-site inspections of certified operations; oversight of certification activities; foreign conformity assessment systems; certification of producer group operations; labeling of nonretail containers; and, calculating organic content of multi-ingredient products.

Forest Service implemented a final rule on *Special Areas; Roadless Area Conservation; National Forest System Lands in Alaska* (January 27, 2023, 88 FR 5252) that repealed a final rule promulgated in 2020 exempting the Tongass National Forest from the 2001 Roadless Area Conservation Rule (2001 Roadless Rule). The 2001 Roadless Rule prohibited timber harvest and road construction or reconstruction within designated inventoried Roadless Areas, with limited exceptions. The rule is consistent with President Biden’s Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.

In late 2023, the Forest Service plans to publish a proposed rule on Carbon Capture, Utilization, and Storage that would allow exclusive or perpetual right of use or occupancy of National Forest System lands that will allow for permanent carbon dioxide sequestration in order to reduce the impacts of climate

change. Furthermore, the Forest Service plans to publish a Financial Assurance for Locatable Minerals Interim Final rule that will allow equities and private investment-rated securities within trust funds as financial assurance for long-term post-closure obligations, which is crucial for the stewardship and restoration of National Forest System lands affected by mining. Finally, the Forest Service is making several updates to its directives that will strengthen its ability to combat climate change and improve access to, and delivery of, public programs and services by reducing administrative burden—including equitable access to recreation, mitigation of adverse impacts, climate resilience, and its Tribal action plan.

In late 2023, Food and Nutrition Service (FNS) plans to publish an interim final rule (December 2023) that codifies flexibility for rural program operators to provide non-congregate meal service in the Summer Food Service Program (SFSP) and establishes a permanent *Summer Electronic Benefits Transfer for Children Program (Summer EBT)*. To gather information for this rulemaking, between April–August 2023, FNS hosted more than 100 listening sessions and information meetings with State agencies, advocacy groups, program operators, and industry partners. For more information about this rule, see RIN 0584–AE96.

In December 2023, FNS also plans to publish a final rule codifying the provisions of the *Access to Baby Formula Act of 2022*. Amongst other things, the rule codifies requirements for State agencies to include language in their Women, Infants and Children (WIC) infant formula rebate contracts that describes remedies in the event of an infant formula recall. This rule was informed by lessons learned and feedback received from State and local agencies, advocacy organizations, and Federal research on the response to recent disasters, the COVID–19 pandemic, and a major WIC product recall. For more information about this rule, see RIN 0584–AE94.

Outlined below are some of USDA's most important upcoming regulatory actions for 2024. These include efforts to restore and expand economic opportunity; address the climate crisis; and support agricultural markets that are free, open, and promote competition. This Regulatory Plan also reflects USDA's continued commitments to ensuring a safe and nutritious food supply and animal welfare protections. As always, our Semiannual Regulatory Agenda contains information on a broad-spectrum of

USDA's initiatives and planned upcoming regulatory actions.

### **Foster Sustainable Economic Growth by Promoting Innovation, Building Resilience to Climate Change, and Expanding Renewable Energy**

*Higher Blends Infrastructure Incentive Program:* Rural Business Cooperative Service (RBCS) Higher Blends Infrastructure Incentive Program (HBIIIP): HBIIIP is a program designed to increase the sales and use of higher blends of ethanol and biodiesel by expanding the infrastructure for renewable fuels derived from U.S. agricultural products. The program is also intended to encourage a more comprehensive approach to market higher blends by sharing the costs related to building out biofuel-related infrastructure. The program should increase availability of domestic biofuels and give Americans additional cleaner fuel options at the pump. RBCS is proposing a rule to codify the policies and procedures for the program in the Code of Federal Regulations, as this program has a significant impact on climate change which is an Administration priority. Public engagement will occur in early fall of 2023. A virtual listening session will be announced in the **Federal Register**. For more information about this rule, see RIN 0570–AB11.

### **Foster an Equitable and Competitive Marketplace for All Agricultural Producers**

*Inclusive Competition and Market Integrity Rules Under the Packers and Stockyards Act:* USDA plans to supplement a recent revision to regulations under the Packers and Stockyards (P&S) Act to prohibit certain prejudices and disadvantages and unjustly discriminatory conduct against covered producers in the livestock, meat, and poultry markets. The proposal (October 3, 2022, 87 FR 60010) set forth prohibited discrimination on the bases of the producer's personal characteristics and identified as prohibited certain retaliatory practices that interfere with lawful communications, assertion of rights, and participation in associations, among other protected activities. The proposal also identified unlawfully deceptive practices that violate the P&S Act with respect to contract formation, contract performance, contract termination and contract refusal. The purpose of the final rule is to promote inclusive competition and market integrity in the livestock, meats, and poultry markets. For more information about this rule, see RIN 0581–AE05.

*Unfair Practices, Undue Preferences, and Harm to Competition under the Packers and Stockyards Act:* The proposal would revise regulations under the Packers and Stockyards Act (Act), providing clarity regarding conduct that may violate the Act, including addressing harm to competition. This proposal reflects feedback received from public input generated by previous proposed and interim final rules. On June 22, 2010, USDA published in the **Federal Register** (75 FR 35338–35354) a proposed rule recommending several changes to the regulations issued under the Packers and Stockyards Act, 1921, as amended (P&S Act). On December 20, 2016, USDA published a new “Scope” paragraph in the **Federal Register** as an Interim Final Rule “IFR” with a request for comments (81 FR 92566–92594). On October 18, 2017, USDA withdrew the IFR (82 FR 48594–01). Though neither of these proposed rules became a final rule, USDA received, reviewed, and considered public comments. For more information about this rule, see RIN 0581–AE04.

### **Provide All Americans Safe, Nutritious Food**

USDA's Food Safety and Inspection Service (FSIS) continues to ensure that meat, poultry, and egg products are safe, wholesome and properly marked, labeled, and packaged, and prohibits the distribution in-commerce of meat, poultry, and egg products that are adulterated or misbranded.

*Salmonella Framework:* One of FSIS' top priorities is to develop a more comprehensive and effective strategy to reduce Salmonella illnesses associated with poultry products. The agency gathered data and information and solicited stakeholder input on Salmonella in poultry. FSIS proposed in 2023 to declare that not-ready-to-eat breaded stuffed chicken products that contain Salmonella at levels of 1 colony forming unit per gram or higher in the chicken components are adulterated within the meaning of the Poultry Products Inspection Act (April 28, 2023, 82 FR 26249) and will finalize this determination in 2024. FSIS also plans to propose a new regulatory framework targeted at reducing Salmonella illnesses associated with poultry products and moving closer to the national target of a 25 percent reduction in Salmonella illnesses. For more information about the proposed new regulatory framework, see RIN 0583–AD96.

In addition, FSIS intends to publish several rules to improve regulatory certainty, which assure consumers that

meat, poultry, and egg products are safe and truthfully labeled.

**Voluntary Labeling of Meat Products With “Product of USA” and Similar Statements:** FSIS plans to publish a final rule to address concerns that the voluntary “Product of USA” label claim may confuse consumers about the origin of FSIS regulated products. FSIS received 3,364 comments on the proposed rule during a 60-day comment period that FSIS extended to 90 days based on requests from stakeholders. In response to the Agency’s consumer research and comments received on the proposed rule, FSIS will define voluntary U.S.-origin label claims so that they are more meaningful to consumers. For more information about this rule, see RIN 0583–AD87.

**Labeling of Meat or Poultry Products Comprised of or Containing Cultured Animal Cells; and Revision of the Nutrition Facts Panels for Meat and Poultry Products and Updating Certain Reference Amounts Customarily Consumed:** FSIS will propose to establish new requirements for the labeling of meat and poultry food products made using animal cell culture technology (i.e., “cell-cultured” food products). In advance of the proposed rule, FSIS and FDA held a joint public meeting in October 2018 to discuss the potential hazards, oversight considerations, and labeling of cell-cultured food products derived from livestock and poultry tissue (September 13, 2018, 83 FR 46476). In addition, FSIS published an advanced notice of proposed rulemaking in the **Federal Register**, soliciting public input on the labeling of cell-cultured seafood, meat, and poultry food products (September 3, 2021, 86 FR 49491). FSIS also plans to finalize a labeling rule to update nutrition labeling for meat and poultry products. The two rules would provide additional certainty about what is required for meat and poultry labeling while ensuring that consumers have accurate information about the food they buy. For more information about these rules, see RINs 0583–AD56 and 0583–AD89.

**FNS’ Child Nutrition Programs: Revisions to Meal Patterns Consistent with the 2020 Guidelines for Americans:** The final rule would revise meal patterns in the National School Lunch Program and School Breakfast Program to make school meals healthier and more consistent with the most recent Dietary Guidelines for Americans while reflecting the nutrient needs of children at risk for food insecurity. Throughout 2022, USDA held over 50 listening sessions with State agencies, school food authorities, advocacy

organizations, Tribal dietitians and schools, professional associations, food manufacturers, and other Federal agencies to inform the proposed rule (February 7, 2023, 88 FR 8050). USDA also received extensive input through over 136,000 public comments on the proposed rule during a 60-day comment period that USDA extended to 90 days based on requests from stakeholders. Through this stakeholder engagement, USDA gained valuable insights into the successes and challenges that schools experience implementing the school meal nutrition standards and will use this information to develop a practical and durable final rule. For more information about this rule, see RIN 0584–AE88.

**FNS’ Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages:** Consistent with recommendations from the National Academies of Sciences, Engineering, and Medicine and the latest Dietary Guidelines for Americans, the final rule would provide participants with greater choices in variety and food package sizes and align the WIC food packages with available nutrition science. When developing the proposed rule (November 21, 2022, 87 FR 71090), FNS solicited feedback from WIC participants, state and tribal partners, and other government agencies. FNS published the proposed rule with a 90-day comment period and will consider comments received in development of this final rule. For more information about this rule, see RIN 0584–AE82.

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

#### **Improve Access to, and Delivery of, Public Programs and Services by Reducing Administrative Burden**

**Forest Service Amendment to Locatable Minerals:** The locatable minerals regulations have remained mostly unchanged since they were first promulgated in 1974. Court cases, government audits, and implementation

experience have identified many shortcomings in the current regulations that challenge the agency’s ability to efficiently and effectively administer locatable mineral activity on National Forest System lands. The Forest Service is proposing to revise its regulations for administering hard-rock mining activities on National Forest System lands, providing permitting certainty; strong, responsible mining standards; enhanced community and Tribal engagement; and proactive environmental management. To gather public input into this proposed rule, it was preceded by a Locatable Minerals advance notice of proposed rulemaking (ANPR) (September 13, 2018, 83 FR 46451). Following the completion of the comment period for the ANPR, the Forest Service analyzed the comments received and used the information to draft the proposed regulation. For more information about this rule, see RIN: 0596–AD32.

#### **USDA—AGRICULTURAL MARKETING SERVICE (AMS)**

##### **Proposed Rule Stage**

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

*Priority:* Other Significant.

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

*CFR Citation:* 9 CFR 201.

*Legal Deadline:* None.

*Abstract:* This action proposes to revise regulations issued under the Packers and Stockyards Act (Act) (7 U.S.C. 181–229c), providing clarity regarding conduct that may violate the Act. Revisions are intended to support market growth, assure fair trade practices and competition, and protect livestock and poultry growers and producers. The action addresses long-standing issues related to competitiveness and showings of harm or likely harm to competition.

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

Sections 202(a) and 202(b) of the P&S Act are broadly written to prohibit unjustly practices and undue preferences. Industry members have complained that the regulations effectuating the Act are too vague and do not provide adequate clarity about

the types of conduct or action that are likely to violate 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 constitutes unfair practices or undue preferences and, therefore a violation of the Act.

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

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

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

**Risks:** Courts have recognized that the proper analysis of alleged violations of these two sections depends on the facts

of each case. However, four courts of appeals have disagreed with USDA's interpretation of the Act and have concluded that plaintiffs could not prove their claims under those sections without proving harm to competition or likely harm to competition. There is a risk if future legal challenge of USDA interpretation of sections 202(c), (d), and (e) of the Act.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/00/24	

**Regulatory Flexibility Analysis Required:** No.

**Government Levels Affected:** None.

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

**RIN:** 0581-AE04

## USDA—AMS

### Final Rule Stage

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

**Priority:** Other Significant.

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

**CFR Citation:** 9 CFR 201.

**Legal Deadline:** None.

**Abstract:** This final rule would supplement a recent revision to regulations issued under the Packers and Stockyards Act (Act) (7 U.S.C. 181 229c) that provided criteria for the Secretary to consider when determining whether certain conduct or action by packers, swine contractors, or live poultry dealers is unduly or unreasonably or advantageous. Supplemental amendments clarify the conduct the Department considers unfair, preferential, unjustly discriminatory, or deceptive and a violation of sections 202(a) and (b) of the Act. The rule would also clarify the criteria and types of conduct that would be considered unduly or unreasonably preferential, advantageous, prejudicial, or disadvantageous and violations of the Act, including retaliatory practices that interfere with lawful communications, assertion of rights, and associational participation.

**Statement of Need:** Revisions to regulations pertaining to the Packers and Stockyards Act (Act) clarify the types of conduct by packers, swine

contractors, or live poultry dealers that the Agricultural Marketing Service (AMS) considers unfair, unjustly discriminatory, or deceptive and a violation of section 202(a) of the Act, regardless of whether such action harms or is likely to harm competition. The rule also clarifies the criteria and/or types of conduct that would be considered unduly or unreasonably preferential, advantageous, prejudicial, or disadvantageous and a violation of section 202(b) of the Act.

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

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

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

**Anticipated Cost and Benefits:** USDA estimates first-year costs associated with this rule to be \$517 thousand, with decreased costs each year thereafter, resulting in a ten-year total cost of \$2.88 million. AMS expects this rule to benefit all segments of the industry, providing greater clarity about what would be considered violations of the Act. AMS expects this rule, coupled with a concurrent rule on the scope of the Act, to strengthen enforcement of the Act, resulting in fairer and more competitive markets for producers and poultry growers.

**Risks:** Industry is divided about adding lists or examples of specific prohibited conduct to the regulations. Some argue such lists would inhibit freedom to forge contracts that fit individual situations, while others contend greater specificity is required so that affected parties can more readily identify violative behavior. Industry is also split on the question of whether



identified prohibited behaviors must be found to harm or likely harm competition to be considered violations of the Act. AMS expects to resolve some of the controversy by being proactive and transparent with the industry to allow for critical discussions and decisions on the rule.

Timetable:

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

Regulatory Flexibility Analysis Required: Yes.  
Small Entities Affected: Businesses.  
Government Levels Affected: None.  
Agency Contact: Michael V. Durando, Deputy Administrator, Fair Trade Practices Program, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW, Washington, DC 20250-0237, Phone: 202 720-0219.  
RIN: 0581-AE05

USDA—FOOD AND NUTRITION SERVICE (FNS)

Final Rule Stage

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

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.  
Legal Authority: 42 U.S.C. 1786, sec. 17(f)(11)(C)  
CFR Citation: 7 CFR 246.10.  
Legal Deadline: None.  
Abstract: This final rulemaking will amend regulations governing the WIC food packages to: (1) incorporate recommendations of the National Academies of Science, Engineering, and Medicine 2017 scientific report, Review of WIC Food Packages: Improving Balance and Choice; (2) align with 2020 Dietary Guidelines for Americans; and (3) make other administrative revisions or clarifications to food package requirements. In the development of the proposed rule, FNS solicited feedback from WIC participants, state and tribal partners, and other government agencies. FNS published the proposed rule with a 90-day comment period and will consider comments received in development of this final rule.

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

Summary of Legal Basis: 42 U.S.C. 1786, sec. 17(f)(11)(C).  
Alternatives: N/A.  
Anticipated Cost and Benefits: This is discussed in the proposed rulemaking’s Regulatory Impact Analysis which was published on November 21, 2022 as an appendix to the rule, available at 87 FR 71090.  
Risks: N/A.  
Timetable:

Action	Date	FR Cite
NPRM .....	11/21/22	87 FR 71090
NPRM Comment Period End.	02/21/23	
Final Action .....	04/00/24	

Regulatory Flexibility Analysis Required: Undetermined.  
Government Levels Affected: Federal, Local, State.  
Federalism: This action may have federalism implications as defined in E.O. 13132.  
Agency Contact: Michael DePiro, Specialist, Department of Agriculture, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314, Phone: 703 305-2876, Email: michael.depairo@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

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

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.  
Legal Authority: 42 U.S.C. 1758, sec. 9(f)(1)  
CFR Citation: 7 CFR 210.10; 7 CFR 210.11; 7 CFR 215.7a; 7 CFR 220.8; 7 CFR 226.20; . . .  
Legal Deadline: None.

Abstract: This rule would finalize long-term school nutrition standards based on the Dietary Guidelines for Americans, 2020–2025, and feedback that USDA received from child nutrition program stakeholders through an extensive stakeholder engagement campaign. The revisions are expected to make school meals more nutritious and more consistent with the goals of the most recent Dietary Guidelines, as required by statute. In addition, this rule would address the Buy American provision, which requires school food authorities to purchase, to the maximum extent practicable, domestic commodities or products for use in the school meal programs. This rulemaking would impact schools that participate in the school meal programs, and for certain rule provisions, facilities and institutions that participate in the Child and Adult Care Food Program and sponsors that participate in the Summer Food Service Program. This rulemaking would also impact participants who receive meals and snacks through the child nutrition programs. USDA received stakeholder input on this rulemaking prior to publishing the proposed rule. Throughout 2022, USDA held over 50 listening sessions with State agencies, school food authorities, advocacy organizations, Tribal stakeholders, professional associations, food manufacturers, and other Federal agencies to inform the proposed rule. USDA also received extensive input through public comments on the proposed rule. Through this stakeholder engagement, USDA gained valuable insights into the successes and challenges that schools experience implementing the school meal nutrition standards and will use this information to develop a practical and durable final rule.

Statement of Need: The revisions are needed to make school meals more nutritious and more consistent with the goals of the most recent Dietary Guidelines, as required by statute.  
Summary of Legal Basis: 42 U.S.C. 1758, sec. 9(f)(1).  
Alternatives: In the proposed rule, USDA considered two alternative proposals for the milk requirements in school meals, one that would maintain the current requirements and an alternative that would not allow flavored milk for children in grades K–8. USDA also considered two alternatives for the grain requirements in school meals, one that would maintain the current requirements and an alternative that would require all grains to be whole grain-rich, except that one day per week, schools may offer enriched grains. In addition, USDA

considered proposing product-specific total sugars limits (to align with existing CACFP requirements) rather than added sugars limits.

**Anticipated Cost and Benefits:** USDA estimated that the proposed rule would cost schools between \$0.03 and \$0.04 per breakfast and lunch served or between \$220 and \$274 million annually including both the School Breakfast Program and National School Lunch Program starting in School Year 2024–2025. The costs to schools would mainly be due to a shift in purchasing patterns to products with reduced levels of added sugars and sodium, administrative costs, and increased labor costs for continued sodium reduction over time.

**Risks:** None known at this time.

**Timetable:**

Action	Date	FR Cite
NPRM .....	02/07/23	88 FR 8050
NPRM .....	03/31/23	88 FR 19229
NPRM Comment Period End.	04/10/23	
NPRM Comment Period Extension.	05/10/23	
Final Rule .....	04/00/24	

#### *Regulatory Flexibility Analysis*

**Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** Local, State.

**Federalism:** Undetermined.

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**Related RIN:** Merged with 0584–AE91  
**RIN:** 0584–AE88

## USDA—FNS

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

**Priority:** Other Significant.

**Legal Authority:** Pub. L. 117–129

**CFR Citation:** 7 CFR 246.

**Legal Deadline:** None.

**Abstract:** This rule would amend 7 CFR 246 to codify the provisions of the Access to Baby Formula Act of 2022 (ABFA). ABFA amends section 17 of the

Child Nutrition Act of 1966 to (1) add requirements to State agency infant formula cost containment contracts; (2) establish waiver authority to the Secretary of Agriculture to address certain emergencies, disasters, and supply chain disruptions impacting WIC; and (3) require WIC State agencies to develop a plan of alternate operating procedures, commonly referred to as a disaster plan. FNS would make other related technical corrections and updates as necessary to modernize applicable WIC Program regulations. This rule was informed by lessons learned and feedback received from State and local agencies, advocacy organizations, and Federal research on the response to recent disasters, the COVID–19 pandemic, and a major WIC product recall.

**Statement of Need:** This rule would codify requirements for State agencies to include language in their WIC infant formula rebate contracts that describes remedies in the event of an infant formula recall, including how an infant formula manufacturer would protect against disruption to program participants in the State (*i.e.*, ensure that WIC participants can purchase formula using WIC benefits). The rule would also codify permanent expanded waiver authority to aid participants in obtaining and redeeming WIC benefits during certain emergencies, disasters, and supply chain disruptions impacting WIC. The required plan of alternate operating procedures would ensure WIC State agencies have plans in place to support the critical need for continuity of operations in the event of a disruption of WIC services, including but not limited to emergency periods, supplemental food recalls, and other supply chain disruptions. Finally, the rule would make other miscellaneous technical corrections and updates as necessary to update WIC regulations.

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

**Alternatives:** No alternatives have been identified at this time.

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

**Risks:** No risks have been identified at this time.

**Timetable:**

Action	Date	FR Cite
Final Rule With Comment.	12/00/23	

#### *Regulatory Flexibility Analysis*

**Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** Local, State.

**Agency Contact:** Michael DePiro, Specialist, Department of Agriculture, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314, Phone: 703 305–2876, Email: [michael.depairo@usda.gov](mailto:michael.depairo@usda.gov).

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**RIN:** 0584–AE94

## USDA—FNS

### 6. Interim Final Rule—Implementing Provisions From the Consolidated Appropriations Act, 2023: Establishing the Summer EBT Program and Non-Congregate Option in the Summer Food Service Program [0584–AE96]

**Priority:** Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

**Legal Authority:** Pub. L. 117–328

**CFR Citation:** 7 CFR 225.

**Legal Deadline:** Other, Statutory, December 29, 2023, Interim Final Rule.

The Consolidated Appropriations Act, 2023 (Pub. L. 117–328) requires FNS to promulgate regulations to carry out the provisions under section 502 of the Act no later than 1 year after the date of enactment. Public Law 117–328 was enacted on December 29, 2022; therefore, FNS is required to publish an interim final rule by December 29, 2023. However, FNS is aiming for publication by December 15, 2023, in order to ensure the statutory deadline is met.

**Abstract:** This interim final rule (IFR) will amend 7 CFR part 225 to codify the flexibility for rural program operators to provide non-congregate meal service in the Summer Food Service program (SFSP). This rule will also establish a new 7 CFR part and codify a new Summer Electronic Benefits Transfer (EBT) for Children Program in this part. The mandate for these changes is found in section 502 of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328), which added new section 13a of the Richard B. Russell National School Lunch Act (NSLA) to allow rural non-congregate meal service in the SFSP and NSLP Seamless Summer Option (SSO) and created a new section 13a to

establish a permanent Summer EBT Program.

To gather information in support of this rulemaking, between April–August 2023, FNS has hosted more than 100 listening sessions and information meetings to date with State agencies, advocacy groups, Program operators, and industry partners. These listening sessions focused primarily, but not exclusively, on the rural non-congregate meal service option. Additional listening sessions related to Summer EBT are forthcoming. Since the enactment of The Consolidated Appropriations Act, 2023, FNS published guidance that serves as the instructions for state agencies and program operators on how to implement SFSP and SSO rural non-congregate meal service during summer 2023, including guidance on oversight and monitoring pertaining to non-congregate operations to assist program operators. In addition, FNS has published early implementation guidance on Summer EBT for Indian Tribal Organizations and State agencies.

*Statement of Need:* The Consolidated Appropriations Act, 2023 (Pub. L. 117–328) established a permanent Summer EBT Program and authorized a rural non-congregate meal service option in the Summer Food Service Program (SFSP), to be promulgated through interim final regulations no later than 1 year after the date of enactment. Accordingly, this interim final rulemaking will amend the SFSP regulations in 7 CFR part 225 and create a new 7 CFR section to allow State agencies and program operators to carry out the statutory provisions of Public Law 117–328. Implementation of this legislation will expand the reach of FNS’ summer nutrition programs, providing greater access for communities and families whom the traditional SFSP cannot reliably reach, which in turn will have a lasting impact on how the nutritional needs of children are met during the summer months.

*Summary of Legal Basis:* Richard B. Russell National School Lunch Act (NSLA) at 42 U.S.C. 1761 and 1762a.

*Alternatives:* The Agency considered alternatives pertaining to the non-congregate meal service provisions in the Summer Food Service Program include the definition of rural, measures to ensure program integrity, meal service models, and State discretion on implementation approaches. For Summer EBT, in addition to the policies included in the interim final rule, the Agency considered alternatives in the areas of State administration, enrollment, EBT issuance and

expungement, and program operations for Indian Tribal Organizations.

*Anticipated Cost and Benefits:* Implementing the rule’s regulatory requirements is expected to add to current program costs at the Federal, State, and local levels, with the majority of costs going towards the establishment and implementation a permanent Summer EBT program. The implementation of this legislation is anticipated to benefit families with children by enabling more such families access to critical nutrition assistance for their children. FNS anticipates that 29 million children currently receiving free or reduced price meals will be eligible for Summer EBT annually. Participation in the SFSP will increase over time by 4.4 million, lifting the number of meals served to children in the summer by more than 380 million.

*Risks:* Summer EBT will be the first new FNS nutrition program in decades and will reach millions of children each summer. Crafting implementing regulations will be a complex process as FNS will need to consider and make determinations with regards to a large number of policy decisions. FNS will also need to engage a wide spectrum of stakeholders early in this process to gather input on best practices and effective approaches to implementation. Given the short timeframe to promulgate this IFR, there is a risk that regulations will not publish in time.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	12/00/23	

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Local, State.

*Agency Contact:* Michael DePiro, Specialist, Department of Agriculture, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314, Phone: 703 305–2876, Email: michael.depairo@usda.gov.

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RIN: 0584–AE96

**USDA—FOOD SAFETY AND INSPECTION SERVICE (FSIS)**

Proposed Rule Stage

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

*Priority:* Other Significant.

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

*CFR Citation:* 9 CFR ch. III.

*Legal Deadline:* None.

*Abstract:* The Food Safety and Inspection Service (FSIS) is proposing to establish new requirements for the labeling of meat or poultry products made using animal cell-culture technology.

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

Based on FSIS’ review of comments on the Advanced Notice of Proposed Rulemaking, the available literature, and the Agency’s ongoing interactions with the U.S. Food and Drug Administration (FDA) and industry, FSIS has determined that new regulatory requirements for labeling are necessary to ensure that cell-cultured meat and poultry products are truthfully and accurately labeled. Due to the novel method of production utilized to produce these products, the biological, chemical, nutritional, or organoleptic properties of some cell-cultured products may substantively differ from conventionally produced meat and poultry in a manner that is relevant to consumers. Moreover, these meat and poultry products, unlike any others on the U.S. market, are not derived from slaughter. It is imperative, therefore, that such products display unique labeling terminology that enables consumers to accurately identify the nature and source of such products.

*Summary of Legal Basis:* The Federal Meat Inspection Act (FMIA; 21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA; 21 U.S.C. 451 *et seq.*) require that meat and poultry products be truthfully and accurately labeled and that their labels be pre-approved by FSIS (21 U.S.C. 607(d) and 457(c), respectively), prior to movement in commerce. FSIS issues labeling regulations and reviews and approves

meat and poultry product labels pursuant to these statutory labeling requirements. Food products made using animal cell culture technology and derived from the cells of livestock subject to the FMIA or the PPIA are subject to the labeling (and other applicable) requirements of these Acts and the regulations issued thereunder.

**Alternatives:** In addition to the option proposed, the Agency would consider alternatives for the requirements for labeling of meat or poultry products made using animal cell culture technology.

**Anticipated Cost and Benefits:** This proposed rule would benefit the public by providing truthful and accurate labeling of meat and poultry products produced using animal cell-culture technology. Consumers would be able to clearly differentiate cell-cultured products from other meat and poultry products to make better informed choices. The proposed rule would benefit industry because all producers would have consistent labels for their products made using animal cell-culture technology. It would also allow producers to design their labels with more certainty because producers would already be aware of FSIS labeling requirements for these products, reducing potential label modification costs.

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

**Risks:** None.

**Timetable:**

Action	Date	FR Cite
ANPRM .....	09/03/21	86 FR 49491
ANPRM Comment Period End.	12/02/21	
NPRM .....	05/00/24	

#### *Regulatory Flexibility Analysis*

**Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** None.

**Agency Contact:** Melissa Hammar, Director, Regulations Development Staff, Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Washington, DC 20250–3700, Phone: 202 286–2255, Email: melissa.hammar@usda.gov.

RIN: 0583–AD89

#### **USDA—FSIS**

##### **8. • Salmonella Framework [0583–AD96]**

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

**Legal Authority:** 21 U.S.C. 451 *et seq.*  
**CFR Citation:** 9 CFR 381.65.

**Legal Deadline:** None.

**Abstract:** FSIS is proposing a new regulatory framework targeted at reducing *Salmonella* illnesses associated with poultry products. First, FSIS is proposing final product standards that would define whether certain raw poultry products contaminated with certain *Salmonella* levels and serotypes are adulterated and thus prohibited from entering commerce. FSIS is also proposing to revise the regulations that require that all poultry slaughter establishments develop, implement, and maintain written procedures to prevent contamination by enteric pathogens throughout the entire slaughter and dressing operation, by establishing new requirements pertaining to how establishments monitor and document whether their processes for preventing microbial contamination are in control. The proposal also focuses on a non-regulatory approach for controlling *Salmonella* on incoming flocks.

**Statement of Need:** While the results of FSIS' *Salmonella* verification sampling show that the Agency's current prevalence-based performance standards approach has been effective in reducing the proportion of poultry products contaminated with *Salmonella*, these measures have not had an observable impact on human illness rates, estimated to be over 1 million annual *Salmonella* illnesses from all sources. Poultry is the leading source of *Salmonella* foodborne illness acquired domestically in the United States. Therefore, in October 2021, FSIS announced that it was mobilizing a stronger, and more comprehensive effort to reduce *Salmonella* illnesses associated with poultry products. As part of this effort, FSIS initiated several activities designed to gather data and information to inform and support future actions related to this new effort. FSIS also held a public meeting in November 2022 to solicit stakeholder input on a draft regulatory framework that the Agency was considering for a new strategy to control *Salmonella* in poultry products and provided an opportunity for stakeholders to submit written comments. After carefully evaluating the written comments and other stakeholder input, along with studies and information that have become available after FSIS made the framework under consideration available to the public, FSIS is proposing a new regulatory framework targeted at reducing *Salmonella* illnesses associated with poultry products.

**Summary of Legal Basis:** FSIS regulates the production of poultry prepared for distribution in interstate commerce under the authority of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). 21 U.S.C. 455(b) provides that the Secretary shall cause to be made by inspector's post-mortem inspection of the carcass of each bird processed, and at any time reinspection as he deems necessary of poultry and poultry products capable of use as human food. 21 U.S.C. 455(c) requires that all poultry carcasses and other poultry products found to be adulterated be condemned. Under the PPIA, a poultry product is adulterated, among other circumstances, if it bears or contains any poisonous or deleterious substance that may render it injurious to health; it is unhealthful, unwholesome, or otherwise unfit for human consumption; or it was prepared, packaged, or held under unsanitary conditions whereby it may have been rendered injurious to health (21 U.S.C. 453(g)(1), (3), and (4)). Finally, 21 U.S.C. 463(b) provides that the Secretary shall promulgate such other rules and regulations as are necessary to carry out the provisions of the PPIA.

**Alternatives:** In addition to the proposed option, FSIS considered an alternative that would keep the current *Salmonella* performance standards. The Agency also considered alternatives for various *Salmonella* levels and serotypes for the proposed final product standards.

**Anticipated Cost and Benefits:** FSIS estimates this proposal would benefit society by preventing *Salmonella* illnesses associated with poultry products. The proposal is also estimated to benefit industry by reducing the risk of illness outbreak-related recalls. The main cost associated with this proposal is the cost to industry associated with maintaining control of products sampled by FSIS for adulterants pending test results.

**Risks:** FSIS estimates this proposal would benefit society by preventing *Salmonella* illnesses associated with poultry products. The proposal is also estimated to benefit industry by reducing the risk of out-break-related recalls. The main cost associated with this proposal is the cost to industry associated with maintaining control of products sampled by FSIS for adulterants pending test results.

**Timetable:**

Action	Date	FR Cite
NPRM .....	02/00/24	

*Regulatory Flexibility Analysis Required:* No.  
*Government Levels Affected:* None.  
*Agency Contact:* Melissa Hammar, Director, Regulations Development Staff, Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Washington, DC 20250–3700, *Phone:* 202 286–2255, *Email:* melissa.hammar@usda.gov.  
*RIN:* 0583–AD96

**USDA—FSIS**

Final Rule Stage

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

*Priority:* Other Significant.  
*Legal Authority:* 21 U.S.C. 601 *et seq.*; 21 U.S.C. 451 *et seq.*  
*CFR Citation:* 9 CFR 317; 9 CFR 381; 9 CFR 413.  
*Legal Deadline:* None.  
*Abstract:* Consistent with the changes that the Food and Drug Administration (FDA) finalized, the Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to update and revise the nutrition labeling requirements for meat and poultry products to reflect recent scientific research and dietary recommendations and to improve the presentation of nutrition information to assist consumers in maintaining healthy dietary practices.

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

extent possible, FDA’s regulations. This approach will help increase clarity of information for consumers and will improve efficiency in the marketplace.

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

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

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

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

*Risks:* None.  
*Timetable:*

Action	Date	FR Cite
NPRM .....	01/19/17	82 FR 6732
NPRM Comment Period End.	04/19/17	
Final Action .....	04/00/24	

*Regulatory Flexibility Analysis Required:* No.  
*Small Entities Affected:* Businesses.  
*Government Levels Affected:* None.  
*Agency Contact:* Melissa Hammar, Director, Regulations Development Staff, Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Washington, DC 20250–3700, *Phone:* 202 286–2255, *Email:* melissa.hammar@usda.gov.  
*RIN:* 0583–AD56

**USDA—FSIS**

**10. Voluntary Labeling of FSIS-Regulated Products With U.S. Origin Claims [0583–AD87]**

*Priority:* Other Significant.  
*Legal Authority:* 21 U.S.C. 601 *et seq.*; 21 U.S.C. 451 *et seq.*; 21 U.S.C. 1031 *et seq.*; 7 U.S.C. 1622 and 1624  
*CFR Citation:* 9 CFR 412.3.  
*Legal Deadline:* None.  
*Abstract:* The Food Safety and Inspection Service (FSIS) is amending its regulations to define the conditions under which the labeling of meat, poultry, and egg products, as well as voluntarily-inspected products, can bear voluntary statements indicating that the product is of United States (U.S.) origin.

*Statement of Need:* FSIS conducted a comprehensive review of the Agency’s current voluntary Product of USA labeling policy to help determine what the Product of USA label claim means to consumers of FSIS-regulated products in the U.S. marketplace. FSIS started this review after receiving several petitions stating that the voluntary label claim Product of USA is confusing to consumers. FSIS’ review of the policy included a consumer survey on Product of USA labeling on beef and pork products. Based on the consumer survey results, reviews of consumer research, and comments received on the petitions, FSIS is revising its regulations to reduce consumer confusion surrounding current voluntary U.S.-origin labeling policy.

*Summary of Legal Basis:* Under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601–695, at 607), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451–470, at 457), and the Egg Products Inspection Act (21 U.S.C. 1031–1056, at 1036), the labels of meat, poultry, and egg products must be approved by the Secretary of

Agriculture, who has delegated this authority to FSIS, before these products can enter commerce. FSIS also provides voluntary reimbursable inspection services, including label approval, under the Agricultural Marketing Act (AMA) (7 U.S.C. 1622 and 1624) for eligible products not requiring mandatory inspection under the FMIA, PPIA, and EPIA. Under the mandates of the FMIA, PPIA, and EPIA, any meat, poultry, or egg product is misbranded if its labeling is false or misleading in any particular (21 U.S.C. 601(n)(1); 21 U.S.C. 453(h)(1); 21 U.S.C. 1036(b)). FSIS has similar authority under the AMA concerning labels of products receiving voluntary inspection services (7 U.S.C. 1622(h)(1)).

**Alternatives:** In addition to the option proposed, the Agency considered the following alternatives: (1) Keeping the current regulatory requirements for U.S.-origin product labeling and taking no proposed regulatory action; and (2) Taking the proposed regulatory action but extending the compliance period for the regulatory changes after publication of the final rule.

**Anticipated Cost and Benefits:** Establishments may incur costs associated with voluntarily changing their labels as a result of any revised regulatory requirements. The final rule is expected to result in quantified industry relabeling, recordkeeping, and market testing costs, which combined are estimated to cost approximately \$3 million, annualized at a 7 percent discount rate over 10 years. The changes will benefit consumers by matching the voluntary Product of USA and Made in the USA label claims with the definition that consumers' likely expected, *i.e.*, as product being derived from animals born, raised, slaughtered, and processed in the United States. The final rule will reduce false or misleading U.S. origin labeling and will reduce the market failures associated with incorrect and imperfect information.

**Risks:** N/A.

**Timetable:**

Action	Date	FR Cite
NPRM .....	03/13/23	88 FR 15290
NPRM Comment Period End.	06/11/23	
Final Action .....	03/00/24	

#### Regulatory Flexibility Analysis

**Required:** No.

**Small Entities Affected:** Businesses.

**Government Levels Affected:** None.

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*RIN:* 0583–AD87

## USDA—FOREST SERVICE (FS)

Proposed Rule Stage

### 11. Update and Clarification of the Locatable Minerals Regulations [0596–AD32]

**Priority:** Other Significant.

**Legal Authority:** 30 U.S.C. 612

**CFR Citation:** 36 CFR 228 (A).

**Legal Deadline:** None.

**Abstract:** The Forest Service proposes the revision of its locatable mineral regulations to better reflect the needs of our national defense, economic prosperity, and environmental stewardship. The agency has identified many challenges in the current regulations, and revising the regulations to address these would allow the Forest Service to better implement its mining regulations. Specifically, the Forest Service is considering in this proposed rule to (1) better meet the purpose of the rule, which is to minimize, to the fullest extent practicable, adverse impacts to surface resources which may result from locatable mineral operations; (2) increase efficiency and transparency in the review process for proposed mineral operations; and (3) increase consistency with the Department of the Interior, Bureau of Land Management (BLM) surface management regulations. This rule will meet the Administration's goals of improving environmental stewardship while also providing more timely response, especially to proposed critical minerals operations.

**Statement of Need:** The Forest Service proposes the amendment of its locatable mineral regulations to better reflect the needs of both the Forest Service and mining industry. Despite major changes in the mining industry and many lessons learned through administering minerals activity on National Forest System (NFS) lands, the Forest Service locatable mineral regulations at 36 CFR 228 subpart A (228A) have remained largely unchanged since first published in 1974. Moreover, specific recommendations to revise and update the 228A regulations have been made in two prominent external reports: the 1999 National Research Council publication *Hard Rock Mining on Federal Lands* and the 2016 Government Accountability Office report *Hardrock Mining: BLM and Forest Service Have Taken Some Actions to Expedite the Mine Plan Review Process but Could Do More* (GAO–16–165). By addressing

recent issues and remedying existing weakness in current regulations that have been identified, the Forest Service would be consistent with the Biden-Harris Administration Fundamental Principles for Domestic Mining Reform by establishing strong responsible mining standards, increasing efficiency in permitting times, and improving environmental, social, and economic outcomes.

**Summary of Legal Basis:** The Mining Law of 1872, as amended, confers a statutory right to enter upon certain National Forest System lands to search for locatable minerals. The Organic Act of 1897 authorized the Forest Service to make rules to regulate occupancy and use of the land and preserve the forests from destruction. The Forest Service's existing regulations for administering locatable minerals activity on National Forest System (NFS) lands are found at 36 CFR part 228 subpart A. These rules govern prospecting, exploration, development, mining, and processing operations conducted on National Forest System lands. Under these rules, the Forest Service requires operators proposing to conduct locatable mineral activity which would likely cause significant disturbance of surface resources to obtain prior approval file a plan of operations.

**Alternatives:** Proposed Action: Publish a proposed rule and seek public comment on updates to 228A that will significantly improve and clarify requirements related to processing plans of operation, reclamation, and operator financial assurance in the event of default. These changes would support the following Administration priorities:

- **Provide Permitting Certainty:** The proposed rule will modernize Forest Service administration of surface use and occupancy of NFS lands for locatable mining operations, provide additional clarity for operators subject to these regulations, continue to minimize adverse impacts to surface resources on NFS lands, and increase alignment with BLM's mining law regulations which will facilitate coordination for projects that span both agency jurisdictions. Increased detail and clarity in agency regulations will reduce the need for time consuming, back-and-forth information requests to obtain a complete operating plan from proponents.

- **Climate:** The proposed rule requires more detail in operating plan submittals to put greater emphasis on up-front planning and subsequent operational monitoring of mining activity to address potential environmental and public safety impacts of more frequent extreme weather events, and decrease the

likelihood of catastrophic events, such as tailings impoundment failures.

- *Critical Minerals and American Supply Chains:* The demand for minerals produced from federal lands is expected to increase to address green energy and carbon-neutral goals. Many critical minerals are only economic to recover when combined with the recovery of a host mineral. The proposed rule clarifies many aspects of administering locatable mining activity on NFS land which is expected to increase agency efficiency, reduce processing time, and facilitate sustainable exploration and development of all locatable mineral deposits, including those containing critical minerals.
- *Meaningful Consultation with Tribal Nations:* The proposed rule's detailed requirements for operating plan submittals will enhance consultation with Tribal Nations through the availability of more information earlier in the process to better assess potential impacts to sacred sites and treaty rights.
- *Conserving Lands and Waters (30 by 30):* The proposed rule expands surface resource protection requirements, agency enforcement options, and financial guarantee provisions to minimize the impact of hardrock mining activity to NFS land and water and will reduce the risk and consequences of legacy pollution.
- *Economy:* Hardrock exploration and mining activity generates jobs in many rural communities adjacent to NFS lands. Mining companies pay income and many other taxes to federal and state governments. For every job at a mine, there's another job in the regional economy that exists because of the mining operation. The locatable mining industry in 2018 supported more than 7,800 direct and indirect jobs. Through more efficient administration of hardrock activity, the Forest Service can better implement federal policy to foster and encourage private enterprise in the sustainable development of domestic resources which would benefit local economies as well as decrease vulnerability to national supply chains.

*No Action:* A no action alternative would leave the regulations unchanged, thus maintaining the status-quo.

*Anticipated Cost and Benefits:* Anticipated costs include increased costs to industry in providing more detail in submitting plans of operation. However, a substantial cost savings for the Forest Service is expected from more modern and efficient agency review and approval of plans of operations.

Anticipated benefits of the updates to 228A would stem from more modern

and efficient agency review and approval of plans of operations. The benefits to industry derive from timelier development of, access to, and use of locatable minerals on National Forest System lands. Expedited access and development of locatable mineral resources is expected to result in an increase in the time value of revenues generated by locatable operations. A potential benefit to the public of facilitating access to National Forest System lands is the increased opportunity to develop domestic sources of strategic and critical minerals which would decrease vulnerability to American supply chains. Most importantly, benefits to the public from the proposed rule are the continued protection, and in some cases, increased assurance about protection of ecosystems and corresponding goods and services from the potential damages of locatable mining activities.

*Risks:* Not applicable.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	09/13/18	83 FR 46451
ANPRM Comment Period End.	10/15/18	
NPRM .....	08/00/24	

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Federal.

*Agency Contact:* Nathan Morris, Department of Agriculture, Forest Service, 1400 Independence Avenue SW, Washington, DC 20250, *Phone:* 202 205-0833, *Email:* nathan.morris@usda.gov.

*RIN:* 0596-AD32

**USDA—RURAL BUSINESS—COOPERATIVE SERVICE (RBS)**

Proposed Rule Stage

**12. • Higher Blends Infrastructure Incentive Program [0570-AB11]**

*Priority:* Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

*Legal Authority:* 5 U.S.C. 301; 7 U.S.C. 1989

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* None.

*Abstract:* The Higher Blends Infrastructure Program (HBIIP) is a program designed to increase the sales and use of higher blends of ethanol and biodiesel by expanding the infrastructure for renewable fuels derived from U.S. agricultural products. The program is also intended to encourage a more comprehensive

approach to market higher blends by sharing the costs related to building out biofuel-related infrastructure. The program should increase availability of domestic biofuels and give Americans additional cleaner fuel options at the pump.

RBCS is proposing a rule to codify the policies and procedures for the program in the Code of Federal Regulations, as this program has a significant impact on climate change which is an administration priority. The proposed rule is intended to seek comment on codification of existing authorities provided through statutory language on eligibility requirements, types and terms of funding, program requirements and processing procedures.

RBCS intends to conduct public engagement to hear from stakeholders and potential applicants about what they would like to see in the regulation as well as what has worked and what has not worked in the past. This program has been implemented for multiple years, so the public should have some input on what has worked and what has not in the past. RBCS is looking for suggestions and input both from those who have applied in the past and those that did not, why they opted not to and if the program could do anything to encourage new applicants.

Targeted primary stakeholders include owners of fueling station owners, convenience store, and fleets, including auto, truck, rail and marine, and their industry associations. Secondary stakeholders include equipment manufacturers, distributors, and installers; State Energy Offices and State Departments of Agriculture; biofuel producers and farmers/ agricultural producers and their industry associations; EPA, DOT, DOE, and other Federal agencies; and other stakeholders and groups with related interests such as environmental and health.

*Statement of Need:* The purpose HBIIP is to increase significantly the sales and use of higher blends of ethanol and bio diesel by expanding the infrastructure for renewable fuels derived from U.S. agricultural products. The program is also intended to encourage a more comprehensive approach to market higher blends by sharing the costs related to building out biofuel-related infrastructure. Currently, the Rural Business-Cooperative Service (RBCS) implements the program through a Notice of Funding Opportunity. This program was initially implemented in fiscal year 2020 through a Notice of Funding Opportunity and under the Commodity Credit Corporation (CCC) authority. In fiscal



year 2023 this was included in IRA and under RBCS authority and a Notice of Funding Opportunity was yet again issued. RBCS is proposing a rule to codify the policies and procedures for the program in the Code of Federal Regulations as this program has a significant impact on climate change which is an administration priority.

**Summary of Legal Basis:** This regulatory action is not required by statute or court order; however, the underlying statutes authorizing RBCS to create these regulations are 5 U.S.C. 301 and 7 U.S.C. 1989.

**Alternatives:** The alternative to rulemaking is to continue to operate the program through issuance of a Notice of Funding Opportunity to announce application windows and applicable requirements for the program.

**Anticipated Cost and Benefits:** The Agency does not expect the new regulation to result in additional costs to applicants or the government.

**Risks:** At this time, the Agency has not completed risk analysis for this action.

**Timetable:**

Action	Date	FR Cite
Proposed Rule ....	06/00/24	

**Regulatory Flexibility Analysis Required:** No.

**Government Levels Affected:** None.

**Agency Contact:** Jeffrey Carpenter, HBIP Program Manager, Department of Agriculture, Rural Business—Cooperative Service, 1400 Independence Avenue SW, Washington, DC 20250, Phone: 402 437–5554, Email: jeff.carpenter@usda.gov.

**RIN:** 0570–AB11

**BILLING CODE** 3410–90–P

## DEPARTMENT OF COMMERCE

### Statement of Regulatory Priorities

Established in 1903, the Department of Commerce (Commerce or Department) is one of the oldest Cabinet-level agencies in the Federal Government. Commerce's mission is to create the conditions for economic growth and opportunity across all American communities by promoting innovation, entrepreneurship, competitiveness, and environmental stewardship. Commerce has 12 operating units, which manage a diverse portfolio of programs and services ranging from trade promotion and economic development assistance to improved broadband access and the National Weather Service, and from

standards development and statistical data production, including the decennial census, to patents and fisheries management. Across these varied activities, the Department seeks to provide a foundation for a more equitable, resilient, and globally competitive economy.

To fulfill its mission, Commerce works in partnership with businesses, educational institutions, community organizations, government agencies, and individuals to:

- *Innovate* by supporting the creation of new ideas through cutting-edge science and technology, from advances in nanotechnology to ocean exploration to broadband deployment, and by protecting American innovations through the patent and trademark system;

- Support *entrepreneurship and commercialization* by enabling community development and strengthening opportunities for minority and other underserved businesses and small businesses;

- Maintain U.S. economic *competitiveness* in the global marketplace by promoting exports and foreign direct investment, ensuring a level playing field for U.S. businesses, and ensuring that technology transfer is consistent with our nation's economic and security interests;

- Provide effective *management and stewardship* of our nation's resources and assets to ensure sustainable economic opportunities; and

- Make informed policy decisions and enable better understanding of the economy and our communities by providing timely, accessible, and accurate economic and demographic data.

Commerce's Regulatory Plan tracks the most important regulations that the Department anticipates issuing to implement these policy and program priorities and foster sustainable and equitable growth. Of Commerce's 12 primary operating units, three bureaus—the National Oceanic and Atmospheric Administration (NOAA), the United States Patent and Trademark Office (USPTO), and the Bureau of Industry and Security (BIS)—issue the vast majority of the Department's regulations, and these three bureaus account for all the planned actions that are considered the Department's highest priority pre-regulatory or regulatory actions for FY 2024.

Consistent with Executive Order 14094, moreover, the Department and its bureaus routinely seek to inform their rulemaking with meaningful opportunities for public input. The efforts of NOAA, USPTO, and BIS to

promote public engagement are discussed in their respective sections, below.

### National Oceanic and Atmospheric Administration

NOAA's mission is built on three pillars: science, service, and stewardship—to understand and predict changes in climate, weather, oceans, and coasts; to share that knowledge and information with others; and to conserve and manage coastal and marine ecosystems and resources.

At its core, NOAA is a scientific agency. It observes, measures, monitors, and collects data from the depths of the ocean to the surface of the sun, and it does so following principles of scientific integrity. These data are turned into weather and climate models and forecasts that are then used for everything from local weather forecasts to predicting the movement of wildfire smoke to identifying the impacts of climate change on fisheries and living marine resources.

With respect to service, NOAA not only collects data but seeks to make it operational. By providing Federal, State, local, Tribal government partners, the private sector, and the public with actionable environmental information, NOAA can facilitate decision-making in the face of climate change. Such decisions can range from businesses planning the location of offices; insurance companies trying to incorporate climate risk into their insurance policies; and municipalities looking to ensure that plans for construction of new housing developments will be resilient to the effects of climate change.

The final pillar of NOAA's mission is stewardship. NOAA seeks to conserve our lands, waters, and natural resources, protecting people and the environment now and for future generations. As part of Commerce, moreover, NOAA recognizes that economic growth must go hand-in-hand with environmental stewardship. For example, the nation's fisheries enhance the nation's productivity and long-term economic growth while ensuring sustainability. Similarly, national marine sanctuaries both protect important natural resources and are significant drivers of ecotourism and local recreation.

Within NOAA, the National Marine Fisheries Services (NMFS) and the National Ocean Service (NOS) are the components that most often exercise regulatory authority to implement NOAA's mission. NMFS oversees the management and conservation of the nation's marine fisheries; protects marine mammals and Endangered



Species Act (ESA)-listed marine and anadromous species; and promotes economic development of the U.S. fishing industry. NOS assists the coastal states in their management of land and ocean resources in their coastal zones, including estuarine research reserves; manages national marine sanctuaries; monitors marine pollution; and directs the national program for deep-seabed minerals and ocean thermal energy.

Many of NOAA's rulemakings are issued pursuant to the following key statutes:

#### *Magnuson-Stevens Fishery Conservation and Management Act*

Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) rulemakings concern the conservation and management of fishery resources in the U.S. Exclusive Economic Zone (generally 3–200 nautical miles from shore). As itemized in the Unified Agenda, NOAA plans to take several hundred actions in FY 2024 under Magnuson-Stevens Act authority. With certain exceptions, rulemakings under the Magnuson-Stevens Act are usually initiated by the actions of eight regional Fishery Management Councils (Councils). The Magnuson-Stevens Act provides a robust public process for managing our nation's fisheries through the work of the Councils. Throughout the Council process, there is significant opportunity for public engagement, including participating on advisory panels, providing testimony at public hearings, and commenting on Council actions. These Councils are comprised of representatives from the commercial and recreational fishing sectors, environmental groups, academia, and Federal and State government, and they are responsible for preparing fishery management plans (FMPs) and FMP amendments, and for recommending implementing regulations for each managed fishery. This unique management system gives fishery managers the flexibility to use local level input to develop management strategies appropriate for each region's unique fisheries, challenges, and opportunities. FMPs address a variety of issues, including maximizing fishing opportunities on healthy stocks, rebuilding overfished stocks, and addressing gear conflicts. After considering the Councils' recommendations in light of the standards and requirements set forth in the Magnuson-Stevens Act and in other applicable laws, NOAA may issue regulations to implement the proposed FMPs and FMP amendments.

#### *Marine Mammal Protection Act*

The Marine Mammal Protection Act of 1972 (MMPA) provides authority for the conservation and management of marine mammals under U.S. jurisdiction. It expressly prohibits, with certain exceptions, the intentional take of marine mammals. The MMPA allows, upon request and subsequent authorization, the incidental take of marine mammals by U.S. citizens who engage in a specified activity (e.g., oil and gas development, pile driving) within a specified geographic region. NMFS authorizes incidental take under the MMPA if it finds that the taking would be of small numbers, have no more than a "negligible impact" on those marine mammal species or stock, and would not have an "unmitigable adverse impact" on the availability of the species or stock for "subsistence" uses. NMFS also initiates rulemakings under the MMPA to establish a management regime to reduce marine mammal mortalities and injuries as a result of interactions with fisheries. In addition, the MMPA allows NMFS to permit the take or import of wild animals for scientific research or public display or to enhance the survival of a species or stock.

#### *Endangered Species Act*

The Endangered Species Act of 1973 (ESA) provides for the conservation of species that are determined to be "endangered" or "threatened," and the conservation of the ecosystems on which these species depend. NMFS and the Department of Interior's Fish and Wildlife Service (FWS) jointly administer the provisions of the ESA: NMFS manages marine and several anadromous species, and FWS manages land and freshwater species. Together, NMFS and FWS work to protect critically imperiled species from extinction. NMFS rulemaking actions under the ESA are focused on determining whether any species under its responsibility is an endangered or threatened species and whether those species must be added to the list of protected species. NMFS is also responsible for designating, reviewing and revising critical habitat for any listed species. In addition, as indicated in the list of highlighted actions below, NMFS and FWS may also issue rules clarifying how particular provisions of the ESA will be implemented.

#### *The National Marine Sanctuaries Act*

The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce to designate and protect as national marine sanctuaries areas of the

marine environment with special national significance due to their conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or aesthetic qualities. The primary objective of the NMSA is to protect marine resources, such as coral reefs, sunken historical vessels, or unique habitats.

NOAA's Office of National Marine Sanctuaries (ONMS), within NOS, has responsibility for management of national marine sanctuaries. ONMS regulations, issued pursuant to NMSA, prohibit specific kinds of activities, describe and define the boundaries of the designated national marine sanctuaries, and set up a system of permits to allow the conduct of certain types of activities that would otherwise not be allowed.

These regulations can, among other things, regulate and restrict activities that may injure natural resources, including all extractive and destructive activities, consistent with community-specific needs and NMSA's purpose to "facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas." In FY 2024, NOAA is expected to have at least three regulatory actions under NMSA.

#### *Coastal Zone Management Act*

The Coastal Zone Management Act (CZMA) was passed in 1972 to preserve, protect, and develop and, where possible, to restore and enhance the resources of the nation's coastal zone. The CZMA creates a voluntary state-federal partnership, where coastal states (States in, or bordering on, the Atlantic, Pacific or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes), may elect to develop comprehensive programs that meet federal approval standards. Currently, 34 of the 35 eligible entities are implementing a federally approved coastal management plan approved by the Secretary of Commerce.

#### *NOAA's Regulatory Plan Actions*

Of the numerous regulatory actions that NOAA is planning for this year, of which approximately 21 are expected to be determined to be significant rulemaking under E.O. 12866, there are four, described below, that the Department considers to be of particular importance.

1. *Illegal, Unreported, and Unregulated Fishing; Fisheries Enforcement; High Seas Driftnet Fishing Moratorium Protection Act (0648–BG11)*: This proposed rule makes conforming amendments to regulations

implementing various statutes amended by the Illegal, Unreported and Unregulated Fishing Enforcement Act of 2015. The Act provides the authority to implement two new international agreements under the Antigua Convention and the United Nations Food and Agriculture Organization Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (Port State Measures Agreement, or PMSA). The PMSA is aimed at combating illegal, unreported and unregulated (IUU) fishing activities through increased port inspection of foreign fishing vessels and thereby closing seafood markets to IUU fish and fish products. This proposed rule would require the collection of certain information from foreign fishing vessels requesting permission to use U.S. ports. It will also include procedures to designate and publicize the ports to which foreign fishing vessels may seek entry and procedures for conducting inspections of these foreign vessels accessing U.S. ports. In addition, this proposed rule will identify and certify nations for IUU fishing and other adverse fishing activities, bycatch of protected living marine resources, and shark catch under the authority of the High Seas Driftnet Fishing Moratorium Protection Act that need to be updated in light of amendments made by the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023.

**2. Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule (0648-B188):** This final rule makes changes to existing vessel speed regulations in an effort to further reduce the likelihood of mortalities and serious injuries to endangered North Atlantic right whales from vessel collisions and prevent the species' extinction. Vessel collisions are a leading cause of the species' decline and contributor to the ongoing Unusual Mortality Event (2017–present). The North Atlantic right whale (*Eubalaena glacialis*) was severely depleted by commercial whaling and, despite protection from commercial harvest since 1935, has not recovered. Following two decades of growth between 1990 and 2010, the species has been in decline over the past decade with a best population estimate of fewer than 350 individuals.

**3. Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat (0648-BK47):** The Secretaries of Interior and Commerce share responsibility for implementing most of the provisions of the Endangered Species Act (ESA). Together, the Department of Interior's Fish and

Wildlife Service and the Department of Commerce's National Marine Fisheries Services (collectively, the Services) have promulgated regulations that implement aspects of the listing and critical habitat designation provisions of section 4 of the ESA. Pursuant to the January 20, 2021 Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990), the Services initiated a review of a 2019 rule that revised the regulations for adding and removing species from the Lists of Endangered and Threatened Wildlife and Plants and clarified procedures for designating critical habitat. Following the review, the Services issued a proposed rule and now seek to finalize a rule that revises the regulations to clarify, interpret, and implement portions of the Act concerning the procedures and criteria used for listing, reclassifying, and delisting species on the Lists of Endangered and Threatened Wildlife and Plants and designating critical habitat.

**4. Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation (0648-BK48):** Pursuant to E.O. 13990, the Services also initiated a review of a 2019 rule that implemented the interagency consultation provisions in section 7 of the ESA. Following the review, the Services issued a proposed rule and now seek to finalize a rule that revises the regulations to further clarify and improve the interagency consultation process, while continuing to provide for the conservation of listed species.

### **The United States Patent and Trademark Office**

The USPTO's mission is to foster innovation, competitiveness, and economic growth, domestically and abroad, by delivering high quality and timely examination of patent and trademark applications, guiding domestic and international intellectual property policy, and delivering intellectual property information and education worldwide.

#### **Major Programs and Activities**

The USPTO is responsible for granting U.S. patents and registering trademarks. This system of secured property rights, which has its foundation in Article I, Section 8, Clause 8, of the Constitution (providing that Congress shall have the power to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries”) has enabled

American industry to flourish. New products have been invented, new uses for old ones discovered, and employment opportunities created for millions of Americans. The continued demand for patents and trademarks underscores the importance to the U.S. economy of effective mechanisms to protect new ideas and investments in innovation, as well as the ingenuity of American inventors and entrepreneurs.

In addition to granting patents and trademarks, the USPTO advises the President of the United States, the Secretary of Commerce, and U.S. government agencies on intellectual property (IP) policy, protection, and enforcement; and promotes strong and effective IP protection around the world. The USPTO furthers effective IP protection for U.S. innovators and entrepreneurs worldwide by working with other agencies to secure strong IP provisions in free trade and other international agreements. It also provides training, education, and capacity building programs designed to foster respect for IP and encourage the development of strong IP enforcement regimes by U.S. trading partners.

As part of its work, the USPTO administers regulations located at title 37 of the Code of Federal Regulations concerning its patent and trademark services and the other functions it performs. In the development of its regulations, the USPTO seeks to increase participation and engagement from members of the public affected by our regulations, including in the development of our regulatory priorities. During the past year, we have increased our engagement efforts to help inform our priorities to date, as well as future priorities. We have held public hearings, as well as published requests for comments, on several of our regulatory actions not only to better understand our stakeholders' needs, but to ensure robust and transparent engagement throughout the rulemaking process. For example, public hearings were held in two rulemakings where the USPTO will be setting and adjusting patent and trademark fees. See “Setting and Adjusting Patent Fees” (0651-AD64) and “Setting and Adjusting Trademark Fees” (0651-AD65). In addition, the USPTO published notices requesting comments on several rulemakings to inform the agency as it develops its proposals. See “Changes Under Consideration to Discretionary Institution Practices, Petition Word-count Limits, and Settlement Practices for America Invents Act Trial Proceedings Before the Patent Trial and Appeal Board” (0651-AD47); “Motion to Amend Practice and Procedures in

Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board” (0651–AD50); “Changes to the Representation of Others in Design Patent Matters Before the United States Patent and Trademark Office” (0651–AD67), and “Rules Governing Pre-Issuance Internal Circulation and Review of Decisions Within the Patent Trial and Appeal Board” (0651–AD68). More information about the specific public engagement activity conducted by the USPTO for each of these rulemakings is found in their respective abstract. The USPTO is currently considering all public feedback as it develops its rulemakings. Throughout our engagement, the USPTO is ensuring that in the regulatory process, we hear from a wide array of members of the public to help the USPTO shape the provisions proposed in its proposed rule or ultimately implemented in the final rule.

Outlined below are the USPTO’s most important upcoming regulatory actions for this year.

#### *The USPTO’s Regulatory Plan Actions*

1. *Setting and Adjusting Patent Fees (0651–AD64)*: This proposed rule would set and adjust Patent fee amounts to provide USPTO with sufficient aggregate revenue to recover its aggregate cost of operations thereby maintaining a sustainable funding model. The new fee amounts would provide USPTO with additional resources to decrease patent pendency and ensure robust and reliable patents are granted while continuing to promote access to the patent system for underresourced individuals. The proposed fee amounts reflect feedback received from members of the Patent Public Advisory Committee and the public, including organizations, practitioners, and independent inventors, during a public hearing held on May 18, 2023.

2. *Setting and Adjusting Trademark Fees (0651–AD65)*: This proposed rule would set and adjust Trademark fee amounts to provide USPTO with sufficient aggregate revenue to recover its aggregate cost of operations thereby maintaining a sustainable funding model. The new fee amounts would provide USPTO with additional resources to ensure the integrity of the Trademark register and promote efficiency of processes while continuing to offer affordable options to stakeholders. The proposed fee amounts reflect feedback received from members of the Trademark Public Advisory Committee and the public, including organizations, practitioners, and small

business owners, during a public hearing held on June 5, 2023.

#### **Bureau of Industry and Security**

BIS advances U.S. national security, foreign policy, and economic objectives by maintaining and strengthening adaptable, efficient, and effective export control and treaty compliance systems as well as by administering programs to prioritize certain contracts to promote the national defense and to protect and enhance the defense industrial base.

#### *BIS Public Engagement*

BIS seeks to increase participation and engagement from members of the public affected by our regulations, including in the development of our regulatory priorities. Within the regulatory process itself, BIS often requests public comments even when not legally required to do so. BIS’s acceptance of comments submitted anonymously or accompanied by requests for protection of business confidential information helps bolster public trust. For nearly all rules, even those that do not include requests for public comment, BIS obtains input from its Technical Advisory Committees (TACs), constituted under the Federal Advisory Committee Act. The TACs are composed of industry experts from a variety of fields. In addition to providing technical and compliance advice on draft rules, the TACs provide technical guidance on developing proposals to multilateral export control regimes, thereby supporting control policy development even prior to rulemaking.

BIS also engages with the public outside of the rulemaking process. BIS has an Office of Exporter Services (OExS), with a Division of Outreach and Educational Services and a Regulatory Policy Division, which support public compliance with and understanding of BIS regulations, including by interacting personally in meetings or on phone calls and responding to written inquiries. BIS itself puts on multiple training seminars per year, many of them outside of the Washington, DC area or online. In addition to these smaller seminars, BIS has a large annual conference (called “Update”), at which it provides an overview of changes to policies and regulations over the past year. The Update Conference involves review and discussion of large, complex regulatory concepts pertaining to BIS, inviting follow-on discussion and interaction from participants, which in turn informs BIS’s deliberations. Many BIS staffers also participate in seminars and conferences hosted by other government agencies or private partners. Public

engagement is a vital part of BIS’s operations.

#### *Major Programs and Activities*

BIS administers four sets of regulations:

- The Export Administration Regulations (EAR) regulate exports and reexports to protect national security, foreign policy, and short supply interests. The EAR includes the Commerce Control List, which describes commodities, software, and technology that are subject to licensing requirements for specific reasons for control. The EAR also regulates U.S. persons’ participation in certain boycotts administered by foreign governments.

- The National Security Industrial Base Regulations provide for prioritization of certain contracts and allocations of resources to promote the national defense, require reporting of foreign government-imposed offsets in defense sales, provide for surveys to assess the capabilities of the industrial base to support the national defense, and address the effect of imports on the defense industrial base.

- The Chemical Weapons Convention Regulations implement declaration, reporting, and on-site inspection requirements in the private sector necessary to meet United States treaty obligations under the Chemical Weapons Convention treaty.

- The Additional Protocol Regulations implement similar requirements for certain civil nuclear and nuclear-related items with respect to an agreement between the United States and the International Atomic Energy Agency.

BIS also has an enforcement component with nine offices covering the United States, as well as BIS export control officers stationed at several U.S. embassies and consulates abroad. BIS works with other U.S. Government agencies to promote coordinated U.S. Government efforts in export controls and other programs. BIS participates in U.S. Government efforts to strengthen multilateral export control regimes and promote effective export controls through cooperation with other governments.

In FY 2024, BIS plans to publish a number of proposed and final rules amending the EAR. These rules will cover a range of issues, including countering Russia’s ongoing aggression against Ukraine and China’s military modernization; imposing controls on military, intelligence, and security end uses and end users that are contrary to the national security or foreign policy interests of the United States, including

human rights values; and increasing the effectiveness of U.S. actions by substantially aligning controls with ally and partner countries. BIS also continues to identify and propose controls for emerging and foundational technologies.

Outlined below are BIS's most important upcoming regulatory actions for this year.

#### *BIS's Regulatory Plan Actions*

1. *Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor Manufacturing Items; Supercomputer and Semiconductor End Use (0694–AI94)*: The interim final rule (IFR), *Implementation of Additional Export Controls: Certain Advanced Computing and Semiconductor End Use; Entity List Modification*, which went into effect on October 7, 2022, amended the EAR to implement controls on advanced computing integrated circuits (ICs), computer commodities that contain such ICs, and certain semiconductor manufacturing items. This interim final rule addresses comments received and makes changes to the original October 7 IFR in response to those comments related to advanced computing integrated circuits and computer commodities that contain such ICs.

2. *Section 1758 Technology Export Controls on Instruments for the Automated Chemical Synthesis of Peptides (0694–AI84)*: Section 1758 of the Export Control Reform Act of 2018 authorizes BIS to establish appropriate controls on the export, reexport or transfer (in-country) of emerging and foundational technologies essential to the national security of the United States. Certain instruments for the automated synthesis of peptides (automated peptide synthesizers) have been identified by BIS for evaluation as a Section 1758 emerging and foundational technology. This final rule implements controls for these automated peptide synthesizers.

3. *Authorization of Certain "Items" to Entities on the Entity List in the Context of Specific Standards Activities (0694–AI06)*: This final rule amends the EAR to authorize the release of specified items subject to the EAR without a license when that release occurs in the context of a "standards-related activity." BIS published an interim final rule in September 2022 that revised the terms used in the EAR to describe the actions permissible under the authorization rather than defining the organizations to which it applies. This final rule responds to comments received in response to the interim final rule.

### **DOC—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)**

#### *Proposed Rule Stage*

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

*Priority:* Other Significant.

*Legal Authority:* Pub. L. 114–81

*CFR Citation:* 50 CFR 300.

*Legal Deadline:* Final, Statutory, December 31, 2023, National Defense Authorization Act, 2023 amended the Moratorium Protection Act and requires that not later than 1 year after the date of enactment of this Act all other updates be enacted.

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

*Statement of Need:* The United States is a signatory to the Port State Measures Agreement (PSMA). The agreement is aimed at combating illegal, unreported and unregulated (IUU) fishing activities through increased port inspection of foreign fishing vessels and thereby closing seafood markets to IUU fish and fish products. In addition, regulations to identify and certify nations for IUU fishing and other adverse fishing activities, bycatch of protected living marine resources, and shark catch under the authority of the High Seas Driftnet Fishing Moratorium Protection Act must be updated in light of amendments made by the James M. Inhofe National Defense Authorization Act for Fiscal year 2023. NMFS proposes to streamline the Moratorium Protection Act regulations by removing provisions that only repeat statutory text, including those provisions regarding identification, notification, and consultation with identified nations.

*Summary of Legal Basis:* This action is required under several statutes: Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015 (Pub. L. 114–81); Ensuring Access to Pacific Fisheries Act (Pub. L. 114–327); High Seas Driftnet Fishing Moratorium Protection Act (Pub. L. 104–43); and, the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117–263). The Secretary of Commerce is authorized to issue regulations to implement the statutory obligations to counter IUU fishing by foreign fishing vessels and to prevent the importation of illegally harvested seafood.

*Alternatives:* Alternatives to taking action at the port would include taking action at sea against IUU fishing vessels and in the supply chain against detected IUU fish or fish products. At-sea monitoring and inspection is part of an overall strategy to combat IUU fishing, but it is extremely expensive, resources are limited, and the United States has limited jurisdiction to board foreign flag vessels at sea. Likewise, tracing and removing illegal products already released into the U.S. seafood market would be difficult and resource intensive. Preventing entry of IUU fishing vessels into ports or investigating fishing vessels at the port is an efficient and effective approach to combat illegal activity and to prevent illegal products from entering the supply chain. There are no alternatives to the conforming amendments to the High Seas Driftnet Fishing Moratorium Protection Act. Without these changes, the implementing regulations would not be consistent with the revised statute.

**Anticipated Cost and Benefits:** The anticipated costs will be minimal in that foreign vessels requesting permission to visit U.S. ports are already required to report. Under this rule, fishing vessel masters will have to include more information about the vessel and its fishing activities directly to the National Marine Fisheries Service (NMFS) Office of Law Enforcement after they submit an electronic notice of arrival to the U.S. Coast Guard. Based on the information submitted, NMFS may deny port privileges for vessels known to have engaged in IUU fishing or may meet the vessel in port to conduct an inspection. The minimal additional data elements required of foreign fishing vessels will be collected through an email to the NMFS Office of Law Enforcement. The additional reporting costs are not anticipated to affect shipping patterns, port usage, or international commerce. In addition, vessel inspections will be coordinated and planned based on the advance notice of arrival information submitted to the U.S. Coast Guard prior to entry into port, thus delays for inspection will be minimal and not result in significant costs to legitimate vessels. Benefits of the rule will accrue when IUU fishing vessels are denied entry, and illegal seafood products are precluded from the U.S. supply chain, thereby maintaining higher prices and market share for legitimate producers of fishery products. In addition, benefits will accrue from reduced costs of inspection and monitoring at ports of entry due to the advance notice provided and the ability of NMFS and Coast Guard to take a risk-management approach to vessel inspection. Should the United States impose trade restrictions on foreign nations due to the amendments to the High Seas Driftnet Fishing Moratorium Protection Act, some costs would be borne by U.S. importers who would have to adjust their supply chains. However, many U.S. importers and seafood dealers are already adjusting supply chains to respond to consumer demand for lawfully-acquired, sustainable and environmentally responsible seafood. The benefits of additional steps to counter IUU fishing will accrue to law-abiding harvesters, processors and traders as fish stocks are recovered and they no longer must compete with illegitimate products in the supply chain.

**Risks:** If the port entry reporting and inspection provisions of this rule were not implemented, there is an increased risk of IUU fishing vessels entering U.S. ports and/or the products of IUU fishing infiltrating the U.S. supply chain. In

addition, the United States would be out of compliance with its international obligations under the PSMA. If the revisions to the High Seas Driftnet Fishing Moratorium Protection Act are not implemented through conforming amendments to the regulations, nations might not be identified under the statute, therefore diminishing the likelihood of corrective actions to counter IUU fishing and to address the bycatch of protected living marine resources and the catch of sharks.

**Timetable:**

Action	Date	FR Cite
NPRM .....	07/08/22	87 FR 40763
NPRM Comment Period End.	09/06/22	
Supplemental NPRM.	11/00/23	

**Regulatory Flexibility Analysis Required:** Yes.

**Small Entities Affected:** Businesses.

**Government Levels Affected:** Federal.

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

**Agency Contact:** Alexa Cole, Director, Office of International Affairs, Trade, and Commerce, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, Phone: 301 427-8286, Email: alexa.cole@noaa.gov.

RIN: 0648-BG11

**DOC—NOAA**

**Final Rule Stage**

**14. Amendments to the North Atlantic Right Whale Vessel Strike Reduction Rule [0648-BI88]**

**Priority:** Other Significant.

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

**CFR Citation:** 50 CFR 224.

**Legal Deadline:** None.

**Abstract:** NMFS published a proposed rule to amend the North Atlantic Right Whale Vessel Strike Reduction Rule (per 50 CFR 224.105; 87 FR 46921, August 1, 2022). NMFS proposed this action to further reduce the likelihood of mortalities and serious injuries to endangered right whales from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event. The proposed rule would (1) modify the spatial and temporal boundaries of current speed restriction areas, currently referred to as Seasonal Management

Areas (SMAs), (2) include most vessels greater than or equal to 35 ft (10.7 m) and less than 65 ft (19.8 m) in length in the vessel size class subject to speed restriction, (3) create a Dynamic Speed Zone framework to implement mandatory speed restrictions when whales are known to be present outside active SMAs, and (4) update the speed rule's safety deviation provision. The proposed amendments to current speed regulations reduce vessel strike risk based on a coast wide collision mortality risk assessment and updated information on right whale distribution, vessel traffic patterns, and vessel strike mortality and serious injury events. NMFS solicited public comment on the proposed action and received over 90,000 public comments. The agency plans to take final action on the proposed rule in 2023.

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

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

**Alternatives:** In January 2021, NMFS released, and solicited public comment on, an assessment of the current right whale vessel speed rule (50 CFR 224.105). The assessment highlighted the need to address collision risk from vessels less than 65 ft in length and modify the boundaries and timing of Seasonal Management Areas (SMAs) to better reflect current whale and vessel traffic distribution, along with other recommendations to improve vessel strike mitigation efforts. In 2022, NMFS completed a coastwide right whale vessel strike risk model (Garrison et al. 2022), which informed development of proposed modifications to the existing speed rule. The proposed rule considered number of alternatives in the draft Regulatory Impact Review and

draft Environmental Assessment. The Preferred Alternative would modify the spatial and temporal boundaries of the existing SMAs to create newly proposed Seasonal Speed Zones (SSZs), add smaller vessels down to 35 ft in length, and establish a mandatory Dynamic Speed Zone program.

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

**Risks:** This action is essential to ensure long-term recovery of North Atlantic right whales. The proposed modifications to the current speed rule are designed to: (1) address a misalignment between existing Seasonal Management Areas and places/times with elevated strike risk, and (2) mitigate currently unregulated lethal strike risk from vessels 35–65 ft in length. Given the endangered status of the North Atlantic right whale, the large geographic area, and the number of stakeholders and potentially regulated entities, final modifications to the current speed rule is of high interest.

**Timetable:**

Action	Date	FR Cite
NPRM .....	08/01/22	87 FR 46921
NPRM Comment Period End.	09/30/22	
NPRM Comment Period Extension.	09/16/22	87 FR 56925
NPRM Comment Period Extension End.	10/31/22	
Final Action .....	12/00/23	

**Regulatory Flexibility Analysis**

**Required:** Yes.

**Small Entities Affected:** Businesses.

**Government Levels Affected:** None.

**Agency Contact:** Kim Damon-Randall, Director, Office of Protected Resources, Department of Commerce, National

Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, Phone: 301 427–8400, Email: kimberly.damon-randall@noaa.gov.  
**Related RIN:** Related to 0648–AS36  
**RIN:** 0648–BI88

**DOC—NOAA**

**15. Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat [0648–BK47]**

**Priority:** Other Significant.

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

**CFR Citation:** 50 CFR 424.

**Legal Deadline:** None.

**Abstract:** Per section 2 of the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990), and subsequent Fact Sheet: List of Agency Actions for Review, the Departments of Commerce and the Interior (the Departments) initiated a review of the previous rulemaking action with the title, “Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat” (84 FR 45020; August 27, 2019) that revised the regulations for adding and removing species from the Lists of Endangered and Threatened Wildlife and Plants and clarified procedures for designating critical habitat. As a result of that review, the Departments proposed to revise those regulations (88 FR 40764, June 22, 2023), and after publication of that proposal, delivered a series of informational sessions to stakeholders including: Federal agencies, State agencies, Federally recognized tribes, Native Hawaiian community leaders, Non-governmental organizations, conservation partners, Industry groups, and Pacific Islander community leaders. FAQs and a recording of the presentation can be viewed on the website <https://fws.gov/project/endangered-species-act-regulation-revisions>.

**Statement of Need:** This action responds to the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990) and the associated Fact Sheet (List of Agency Actions for Review).

**Summary of Legal Basis:** This action is authorized under 16 U.S.C. 1531 *et seq.*

**Alternatives:** This is a joint rulemaking by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS; the

Services) to revise joint regulations implementing the Endangered Species Act (ESA). Pursuant to E.O. 13990, the Services reviewed the 2019 final rule with the title, “Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat” (84 FR 45020; August 27, 2019), which revised the regulations for adding and removing species from the Lists of Endangered and Threatened Wildlife and Plants and clarified procedures for designating critical habitat. Following a review of the 2019 rule, the Services proposed to revise portions of the regulations that the 2019 rule addressed (see 88 FR 40764, June 22, 2023). The Services have since held a series of seven informational webinars for stakeholders and are seeking public comment on the proposed rule as well as all aspects of the 2019 final rule.

**Anticipated Cost and Benefits:** Potential costs directly stemming from this rule would be borne by the Services and would be non-significant. Potential benefits stemming from this rule would be improved clarity and effectiveness of the implementing regulations that guide the Services when classifying species and designating critical habitat under the ESA.

**Risks:** This action addresses several different provisions in the Services’ joint ESA-implementing regulations. Overall, the proposed changes will reduce the risk associated with making listing, delisting, and reclassification decisions; however, those actions will continue to have independent levels of risk that vary depending on the particular species. The proposed changes will also reduce risk associated with some but not necessarily all, critical habitat determinations and designations, which will continue to have independent risk levels that vary based on the particular species and habitats involved.

**Timetable:**

Action	Date	FR Cite
NPRM .....	06/22/23	88 FR 40764
NPRM Comment Period End.	08/21/23	
Final Action .....	04/00/24	

**Regulatory Flexibility Analysis Required:** No.

**Government Levels Affected:** Federal.

**Agency Contact:** Kim Damon-Randall, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910,

Phone: 301 427–8400, Email: kimberly.damon-randall@noaa.gov.  
Related RIN: Related to 0648–BH42, Related to 1018–BC88  
RIN: 0648–BK47

DOC—NOAA

16. Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation [0648–BK48]

Priority: Other Significant.  
Legal Authority: 16 U.S.C. 1531 *et seq.*  
CFR Citation: 50 CFR 402.  
Legal Deadline: None.  
Abstract: Per section 2 of the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990), and subsequent Fact Sheet: List of Agency Actions for Review, the Departments of Commerce and the Interior (the Departments) initiated a review of the previous rulemaking action with the title, Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation” (84 FR 44976; August 27, 2019) that revised portions of the regulations that implement section 7 of the Endangered Species Act of 1973, as amended. As a result of that review, the Departments proposed to revise those regulations (88 FR 40753; June 22, 2023), and after publication of that proposal, delivered a series of informational sessions to stakeholders including: Federal agencies, State agencies, Federally recognized tribes, Native Hawaiian community leaders, Non-governmental organizations, conservation partners, industry groups, and Pacific Islander community leaders. FAQs and a recording of the presentation can be viewed on the website <https://fws.gov/project/endangered-species-act-regulation-revisions>.

Statement of Need: This action responds to the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990) and the associated Fact Sheet (List of Agency Actions for Review).  
Summary of Legal Basis: This action is authorized under 16 U.S.C. 1531 *et seq.*  
Alternatives: This is a joint rulemaking by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS; the Services) to revise joint regulations implementing the Endangered Species Act (ESA). Pursuant to E.O. 13990, the Services reviewed the 2019 final rule

with the title, Endangered and Threatened Wildlife and Plants: Regulations for Interagency Cooperation (84 FR 44976; August 27, 2019), which revised portions of the regulations that implement section 7 of the Endangered Species Act of 1973, as amended. Following a review of the 2019 rule, the Services proposed to revise portions of the regulations that the 2019 rule addressed (see 88 FR 40753; June 22, 2023). The Services have since held a series of seven informational webinars for stakeholders and are seeking public comments on the proposed rule as well as all aspects of the 2019 final rule.  
Anticipated Cost and Benefits: The rulemaking revises and clarifies existing requirements for Federal agencies, including the Services, under section 7 of the ESA. Federal agencies are the only entities affected by this rule. We do not anticipate significant costs associated with the rule. This rule is meant to provide clarity to the standards with which we evaluate proposed Federal agency actions pursuant to section 7 of the ESA, which will be a benefit to the Services and Federal action agencies.  
Risks: This action addresses the ESA Interagency Cooperation provisions in the Services’ joint ESA-implementing regulations. Overall, the proposed changes will reduce the risk to ESA-listed species and designated critical habitat associated with ensuring Federal action agencies do not jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat by clarifying and improving the interagency consultation process and continuing to provide for the conservation of ESA resources.  
Timetable:

Action	Date	FR Cite
NPRM .....	06/22/23	88 FR 40753
NPRM Comment Period End.	08/21/23	
Final Action .....	04/00/24	

Regulatory Flexibility Analysis Required: No.  
Government Levels Affected: None.  
Agency Contact: Kim Damon-Randall, Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, Phone: 301 427–8400, Email: kimberly.damon-randall@noaa.gov.  
Related RIN: Related to 0648–BH41, Related to 1018–BC87  
RIN: 0648–BK48

DOC—PATENT AND TRADEMARK OFFICE (PTO)  
Proposed Rule Stage  
17. Setting and Adjusting Patent Fees [0651–AD64]  
Priority: Other Significant. Major status under 5 U.S.C. 801 is undetermined.  
Legal Authority: Pub. L. 112–29  
CFR Citation: 37 CFR 1; 37 CFR 41.  
Legal Deadline: None.  
Abstract: The United States Patent and Trademark Office (USPTO or Office) takes this action to set and adjust Patent fee amounts to provide the Office with a sufficient aggregate revenue to recover its aggregate cost of operations thereby maintaining a sustainable funding model. The new fee amounts will provide the Office with additional resources to decrease patent pendency and ensure robust and reliable patents are allowed while continuing to promote access to the patent system for underresourced individuals. This proposal reflects feedback we have received from members of the Patent Public Advisory Committee and the public, including organizations, practitioners, and independent inventors, during a public hearing held on May 18, 2023. As we develop this regulation, we will be seeking additional public comment through the rulemaking process.  
Statement of Need: The purpose of this rule is to set and adjust patent fee amounts to provide sufficient aggregate revenue to cover the agency’s aggregate cost of operations. To this end, this rule creates new or changes existing fees for patent services, and does so without imposing any new costs.  
Summary of Legal Basis: The Leahy-Smith America Invents Act (AIA), enacted in 2011, provided USPTO with the authority to set and adjust its fees for patent and trademark services. Since then, USPTO has conducted an internal biennial fee review, in which it undertook internal consideration of the current fee structure, and considered ways that the structure might be improved, including rulemaking pursuant to the USPTO’s fee setting authority. This fee review process involves public outreach, including, as required by the Act, public hearings held by the USPTO’s Public Advisory Committees, as well as public comment and other outreach to the user community and public in general.  
Alternatives: This rulemaking action is currently in development and alternatives have not yet been determined.  
Anticipated Cost and Benefits: This rulemaking action is currently in



development and aggregate annual economic impacts have not yet been determined. The user fees charged by the USPTO for its services are considered transfer payments that do not affect the total resources available to society, and therefore the changes to patent fees being developed by this rulemaking are transfers, and are not costs of this rulemaking. It is anticipated that the final rule would become effective with the new fee schedule in 2024.

**Risks:** The USPTO will set and adjust Patent fee amounts to provide the Office with a sufficient amount of aggregate revenue to recover its aggregate cost of operations while helping the Office maintain a sustainable funding model, reduce the current patent application backlog, decrease patent pendency, and improve the reliability of issued patents. Therefore, one risk of taking no action could be that USPTO might not be able to recover its aggregate costs of operations in the long run.

*Timetable:*

Action	Date	FR Cite
Notice of Public Hearing and Request for Comments.	04/20/23	88 FR 24392
Comment Period End.	05/25/23	
NPRM .....	01/00/24	
NPRM Comment Period End.	04/00/24	
Final Action .....	10/00/24	
Final Action Effective.	11/00/24	

*Regulatory Flexibility Analysis*

**Required:** Yes.

**Small Entities Affected:** Businesses, Organizations.

**Government Levels Affected:** None.

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

**RIN:** 0651-AD64

**DOC—PTO**

**18. Setting and Adjusting Trademark Fees [0651-AD65]**

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

**Legal Authority:** Pub. L. 112-29

**CFR Citation:** 37 CFR 2.

**Legal Deadline:** None.

**Abstract:** The United States Patent and Trademark Office (USPTO or

Office) takes this action to set and adjust Trademark fee amounts to provide the Office with a sufficient aggregate revenue to recover its aggregate cost of operations thereby maintaining a sustainable funding model. The new fee amounts will provide the Office with additional resources to ensure the integrity of the Trademark register and promote efficiency of processes while continuing to offer affordable options to stakeholders. This proposal reflects feedback we have received from members of the Trademark Public Advisory Committee and the public, including organizations, practitioners, and small business owners, during a public hearing held on June 5, 2023. As we develop this regulation, we will be seeking additional public comment through the rulemaking process.

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

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

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

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

**Risks:** The USPTO will set and adjust trademark fee amounts to provide the

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

*Timetable:*

Action	Date	FR Cite
Notice of Public Hearing and Request for Comments.	04/27/23	88 FR 25623
Comment Period End.	06/12/23	
NPRM .....	11/00/23	
NPRM Comment Period End.	01/00/24	
Final Action .....	07/00/24	
Final Action Effective.	09/00/24	

*Regulatory Flexibility Analysis*

**Required:** Yes.

**Small Entities Affected:** Businesses, Organizations.

**Government Levels Affected:** None.

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

**RIN:** 0651-AD65

**BILLING CODE** 3410-12-P

**DEPARTMENT OF DEFENSE**

**Statement of Regulatory Priorities**

*Background*

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



Because of this expansive and diversified mission and reach, DoD regulations can address a broad range of matters and have an impact on varied members of the public, as well as other federal agencies.

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

#### *Retrospective Review of Existing Regulations*

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

#### *Public Participation and Community Outreach*

As the DoD develops our regulations, we seek to increase public participation and community outreach to be better informed of and address issues from members of the public affected by our regulations. The following provides examples of our specific outreach and public participation efforts.

The Office of the Assistant to the Secretary of Defense for Public Affairs/Community Engagement Directorate, via its Opinion Leader Engagement portfolio, provides public affairs support to leaders throughout the Office of the Secretary of Defense (OSD) who are responsible for regulatory activities. This support includes convening roundtables and similar engagements for national stakeholder organizations to meet with OSD leaders to discuss and share information about DoD policies and programs that are governed by Federal regulations. For example, regular engagements with leaders of national military and veteran supporting organizations include topics such as military benefits, housing, healthcare, compensation, and sexual assault prevention and response, which are governed by law and Federal regulation. These meetings allow the regulating authorities in OSD an opportunity to dialogue with national organizations with a stakeholder interest in the impact and effect of DoD regulations.

DoD engages with the public on procurement-related regulations that

will affect the Defense Federal Acquisition Regulation Supplement (DFARS) in several ways. In addition to publishing abstracts of and anticipated publication dates for upcoming rules in the biannual Unified Agenda, members of the public can track the progress of any open and pending DFARS regulation via the Open DFARS Cases Report, which is publicly available at [https://www.acq.osd.mil/dpap/dars/case\\_status.html](https://www.acq.osd.mil/dpap/dars/case_status.html). The report is updated on a weekly basis and includes the following information: a case number, title, DFARS parts anticipated to be impacted by the regulation, a summary of the basis for the regulation, and the status of the regulation. Members of the public who are interested in a particular DFARS case are encouraged to monitor the Open DFARS Cases Report to track the progress of a particular regulation through the rulemaking process.

DoD also meets with industry associations on a quarterly basis. Industry associations that regularly participate in these quarterly discussions include the Council of Defense and Space Industry Associations, the Professional Services Council, the Aerospace Industries Association, and the National Defense Industrial Association. During these meetings, DoD often provides updates on open DFARS cases.

While developing certain DFARS regulations, DoD may seek input from the public by publishing in the **Federal Register** an early engagement opportunity, an advance notice of proposed rulemaking (ANPR), or a general request for information (RFI). Notices for early engagement opportunities usually pertain to a recent law, such as the annual National Defense Authorization Act, and request input on implementation of the law in the DFARS. ANPRs and RFIs may include a summary of the overarching policy objectives of the regulation and a list of questions seeking input that will help DoD develop a proposed regulation. Information on whether DoD plans to publish an ANPR or RFI is included in both the Open DFARS Cases Report and the biannual Unified Agenda.

Occasionally, while an ANPR, proposed DFARS regulation, or interim DFARS regulation is out for public comment, DoD may hold a public meeting to allow the public to provide feedback to the Government in an open forum. Information about whether DoD plans on holding a public meeting for an ANPR or a regulation is normally included in the ANPR, proposed regulation, or interim regulation when it is published for public comment.

Presentations made during the public meeting are made publicly available.

The U.S. Army Corps of Engineers (USACE) often utilizes listening sessions prior to proposing a rule to obtain public input that is then used to inform the contents of the proposed rule. Additionally, **Federal Register** notices, website postings, press releases, and social media releases are used to notify the public of the dates and times for the listening sessions. When a **Federal Register** notice is used to provide notification of the listening sessions, the use of an open docket is employed for the submission public comments in addition to receipt of public comments during the listening sessions. Also, the USACE may publish an advanced notice of proposed rulemaking to engage the public on the development of a proposed rule. **Federal Register** notices, website postings, press releases, and social media releases are used to notify the public of the publication of the proposed rule and how they can provide comments and engage in the rulemaking effort.

Finally, the USACE has meetings with industry associations, NGOs, or similar stakeholders to provide updates on proposed policies or actions to solicit informal feedback that is used to help inform the path forward for the development of a proposed rule.

#### *DOD Priority Regulatory Actions*

The regulatory and deregulatory actions identified in this Regulatory Plan embody the core of DoD’s regulatory priorities for Fiscal Year (FY) 2024 and help support President Biden’s regulatory priorities, the Secretary of Defense’s top priorities, and those priorities set out in the National Defense Strategy. The DoD regulatory prioritization is focused on initiatives that:

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

### *Rules That Promote the Country's Economic Resilience*

#### *Pandemic COVID-19 Rules*

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

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

The Department of Defense is finalizing an interim final rule to amend 32 CFR part 199 to include coverage that was temporarily added for National Institute of Allergy and Infectious Disease-sponsored clinical trials for the treatment or prevention of COVID-19. This rule will also finalize the temporary addition of the treatment use of investigation drugs under U.S. Food and Drug Administration-approved expanded access programs for the treatment of coronavirus disease 2019 (COVID-19) from the interim final rule titled "TRICARE Coverage of Certain Medical Benefits in Response to the COVID-19 Pandemic" (32 CFR part 199, 0720-AB82), which published in the **Federal Register** on September 3, 2020 (85 FR 54914-54924).

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

This rule finalizes an interim final rule that amended 32 CFR part 199 by: (1) adding freestanding End Stage Renal Disease (ESRD) facilities as a category of TRICARE-authorized institutional provider and modifying the reimbursement for such facilities; and (2) temporarily adopting Medicare's New COVID-19 Treatments Add-on

Payment (NCTAP). The ESRD provisions are permanent, and the temporary NCTAP provisions expire at the end of the fiscal year in which the Secretary of Health and Human Services' declared coronavirus disease 2019 (COVID-19) public health emergency ends.

#### *Medical Debt Relief*

Medical Billing for Healthcare Services Provided by Department of Defense Medical Treatment Facilities to Civilian Non-Beneficiaries. RIN 0720-AB87

This rule is aimed at preventing severe financial harm to civilians who are not covered beneficiaries of the Military Health System, and who receive healthcare services at military medical treatment facilities. The rule implements the requirement to apply a sliding fee and/or a catastrophic waiver to medical invoices of non-beneficiaries; to accept payments from health insurers as full payment; to not balance bill non-beneficiaries except for copays, coinsurance, deductibles, nominal fees, and non-covered services; and grants the Director of Defense Health Agency (DHA) discretionary authority to waive medical debts of non-beneficiaries when the healthcare provided enhances the knowledge, skills, and abilities of healthcare providers, as determined by the Director of DHA.

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

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

Revisions to this regulation: (1) update and clarify the obligations that Section 504 of the Rehabilitation Act of 1973 (section 504) imposes on recipients of Federal financial assistance and the Military Departments and Components (DoD Components); (2) reflect the most current Federal statutes and regulations, as well as developments in Supreme Court jurisprudence, regarding unlawful discrimination on the basis of disability and promotes consistency with comparable provisions implementing title II of the Americans with Disabilities Act (ADA); (3) implement section 508 of the Rehabilitation Act of 1973 (section 508), requiring DoD make its electronic and information technology accessible to individuals with disabilities; (4) establish and clarify obligations under the

Architectural Barriers Act of 1968 (ABA), which requires that DoD make facilities accessible to individuals with disabilities; and (5) Provide complaint resolution and enforcement procedures pursuant to section 504 and the complaint resolution and enforcement procedures pursuant to section 508. These revisions incorporate the directive of Executive Order 14035, "Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce" by defining, clarifying, advancing accessibility throughout DoD programs and activities.

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

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

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

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

Section 103(m) of the Water Resources Development Act (WRDA) of 1986, as amended (33 U.S.C. 2213(m)), authorizes the USACE to reduce the non-Federal share of the cost of a study

or project for certain communities that are not able financially to afford the standard cost-share. Part 241 of title 33 in the Code of Federal Regulations provides the criteria that the USACE uses in making these determinations where the primary purpose of the study or project is flood damage reduction. The proposed rule would update this regulation, by broadening its applicability to include projects with other purposes (instead of just flood damage reduction) and the feasibility study of a project (instead of just design and construction). The WRDA 2000 modified section 103(m) to include projects with the following purposes: environmental protection and restoration, flood control, navigation, storm damage protection, shoreline erosion, hurricane protection, and recreation or an agricultural water supply project which have not yet been added to the regulation. It also included the opportunity to cost share all phases of a USACE project to also include feasibility studies in addition to the already covered design and construction. This rule would update the framework for determining whether a project is eligible for consideration for a reduction in the non-Federal cost share based on ability to pay.

*Rules That Support Underserved Communities and Improve Small Business Opportunities Rules of Particular Interest to Small Business*

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

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

upon expiration of the SBIR/STTR protection period. DoD hosted public meetings to obtain the views of interested parties regarding the advance notice of proposed rulemaking and the proposed rule published in the **Federal Register** on August 31, 2020 (85 FR 53758) and December 19, 2022 (87 FR 77680), respectively.

*Executive Order 14036, “Promoting Competition in the American Economy” July 9, 2021 Rule That Promotes Competition in the American Economy*

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

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

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

This rule implements section 822 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81). Section 822 revises 10 U.S.C. 2374a, redesignated as 10 U.S.C. 4025, regarding the award of prizes for advanced technology achievement to: (1) authorize the award of procurement contracts and other agreements “as another type of prize” (as in other than

cash prizes); (2) permit the award of prizes, including procurement contracts and other agreements, in excess of \$10,000,000 with the approval of the Under Secretary of Defense for Research and Engineering; and (3) require DoD provide Congress with notice of an award of a procurement contract or other agreement under this program that exceeds \$10 million. This rule will help to expand the Defense Industrial Base, thereby increasing competition for future DoD contracts.

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

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

*Rules That Support National Security Efforts*

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

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

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

This rule establishes a requirement for Defense Industrial Base (DIB) contractors to be assessed against the Cybersecurity Maturity Model Certification (CMMC) requirements at Level 1, 2 or 3 to be eligible for award of designated future DoD contracts. The CMMC Program is designed to provide increased assurance to the DoD that defense contractors and subcontractors are compliant with information protection requirements for Federal Contract Information (FCI) and Controlled Unclassified Information (CUI) and are protecting such information at a level commensurate with risk from cybersecurity threats.

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

This rule will allow a broader community of defense contractors to access to relevant cyber threat

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

*Rules That Tackle the Climate Crisis and Protect the Environment*

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

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

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

The U.S. Army Corps of Engineers (Corps) is proposing to update the Federal regulation that covers the procedures that the Corps uses under section 5 of the Flood Control Act of 1941, as amended (33 U.S.C. 701n), commonly referred to as Public Law 84-99. The Corps relies on this program to prepare for, respond to, and help

communities recover from a flood, hurricane, or other natural disaster, including the repair of damage to eligible flood risk reduction infrastructure. The Corps initiated this rulemaking process through an advanced notice of proposed rulemaking (ANPRM) on February 13, 2015. As a next step, the Corps issued a notice of proposed rulemaking (NPRM) on November 11, 2022, which proposed to repeal the existing regulation and replace it with a new regulation that addresses statutory changes under various Water Resources Development Act provisions, reflects lessons learned over the past 20 years, and incorporates agency policies now in guidance relating to natural disaster procedures. Hurricane Katrina (2005), Hurricane Sandy (2012), flooding on the Mississippi and Missouri Rivers (2008, 2011, and 2013), and Hurricanes Harvey, Irma, and Maria (2017) have provided a more detailed understanding of the nature and severity of risk associated with flood control projects. In addition, the maturation of risk-informed decision-making approaches and technological advancements influenced the outlook on the implementation of Public Law 84-99 activities, with a shift toward better alignment with Corps Levee Safety and National Flood Risk Management Programs, as well as the National Preparedness and Response Frameworks. Through these programs, the Corps works with non-Federal sponsors and stakeholders to assess, communicate, and manage the risks to people, property, and the environment associated with levee systems and flood risks.

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

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

NHPA when processing permit applications and the ACHP's NHPA implementing regulations, the Corps is proposing to remove the Regulatory Program's implementing regulations from its permitting regulations. The Corps will instead follow the ACHP's NHPA implementing regulations, relying on the flexibility in those regulations. The Corps is also proposing to make conforming changes to its nationwide permit program regulations.

Amendments to the Revised Definition of "Waters of the United States". RIN: 0710-AB55

In April 2020, the EPA and the Department of the Army ("the agencies") published the Navigable Waters Protection Rule that revised the previously codified definition of "waters of the United States" (85 FR 22250, April 21, 2020). The Navigable Waters Protection Rule was vacated by courts. On January 18, 2023, the agencies issued a final rule, "Revised Definition of 'Waters of the United States'" (88 FR 3004) which became effective on March 20, 2023. On May 25, 2023, the U.S. Supreme Court issued its decision in the case of *Sackett v. Environmental Protection Agency*. In light of this decision, the agencies are interpreting the phrase waters of the United States consistent with the Supreme Court's decision in *Sackett*. The agencies are developing a rule to amend the final "Revised Definition of 'Waters of the United States'" rule, published in the **Federal Register** on January 18, 2023, consistent with the U.S. Supreme Court's decision in *Sackett*.

*Rules That Address Military Family Matters*

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

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

DOD—OFFICE OF THE SECRETARY (OS)

Proposed Rule Stage

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

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801. Legal Authority: 5 U.S.C. 301; Pub. L. 116–92, sec. 1648 CFR Citation: 32 CFR 170. Legal Deadline: None.

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

Office of the DoD CIO/CMMC Program Management Office plans to host a public meeting on the 32 CFR CMMC Program proposed rule after it is published in the Federal Register for public review and comment.

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

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

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

Alternatives: DoD considered and adopted several alternatives during the development of this rule that reduce the burden on the DIB community and still meet the objectives of the rule. These alternatives include: (1) maintaining status quo, leveraging only the current requirements implemented in DFARS provision 252.204–7019 and DFARS

clause 252.204–7020 requiring DIB contractors and offerors to self-assess utilizing the DoD Assessment Methodology and entering a Basic Summary Score; (2) revising CMMC to reduce the burden for small businesses and contractors who do not process, store or transmit critical CUI by eliminating the requirement to hire a C3PAO and instead allow self-assessment with affirmation to maintain compliance at CMMC Level 1, and allowing triennial self-assessment with annual affirmation to maintain compliance for some CMMC Level 2 programs; (3) exempting contracts and orders exclusively for the acquisition of commercially available off-the-shelf items; and, (4) implementing a phased implementation for CMMC.

In addition, the Department took into consideration the timing of the requirement to achieve a specified CMMC level: (1) at time of proposal or offer submission, (2) after contract award, (3) at the time of contract award, or (4) permitting government program managers to seek approval to waive inclusion of a CMMC requirement in a solicitation, subject to DoD internal policies, procedures, and waiver approval requirements.

Anticipated Cost and Benefits: The theft of intellectual property and sensitive information, including FCI and CUI, from all U.S. industrial sectors due to malicious cyber activity threatens U.S. economic and national security. The Council of Economic Advisors estimates that malicious cyber activity cost the U.S. economy between \$57 billion and \$109 billion in 2016. By incorporating heightened cybersecurity standards into acquisition programs, the CMMC Program provides the Department assurance that contractors and subcontractors are meeting DoD’s cybersecurity requirements and provides a key mechanism to adapt to an evolving threat landscape.

Risks: The aggregate loss of intellectual property and certain unclassified information from the DoD supply chain can undercut U.S. technical advantages and innovation, as well as significantly increase risk to national security.

Timetable:

Action	Date	FR Cite
NPRM .....	11/00/23	

Regulatory Flexibility Analysis

Required: Yes.

Small Entities Affected: Businesses.

Government Levels Affected: Federal.

Agency Contact: Diane L. Knight, Senior Management and Program

Analyst, Department of Defense, Office of the Secretary, 4800 Mark Center Drive, Suite 12E08, Alexandria, VA 22350, Phone: 202 770–9100, Email: diane.l.knight10.civ@mail.mil. RIN: 0790–AL49

DOD—OS

Final Rule Stage

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

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

CFR Citation: 32 CFR 236.

Legal Deadline: None.

Abstract: The DIB CS Program currently provides cyber threat information to cleared defense contractors. Proposed revisions would allow all defense contractors who process, store, develop, or transit DoD controlled unclassified information to be eligible for the program and to receive cyber threat information. Expanding participation will allow a broader community of defense contractors to participate in the DIB CS Program and is in alignment with the National Defense Strategy.

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

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

Alternatives: (1) No action alternative: Maintain status quo with the ongoing voluntary cybersecurity program for cleared contractors. (2) Next best alternative: DoD posts generic cyber threat information and cybersecurity best practices on a public accessible

website without directly engaging participating companies.

**Anticipated Cost and Benefits:**

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

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

**Timetable:**

Action	Date	FR Cite
NPRM .....	05/03/23	88 FR 27832
NPRM Comment Period End.	06/20/23	
Final Action .....	04/00/24	

**Regulatory Flexibility Analysis**

**Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** Federal.

**Agency Contact:** Ms. Stacy Bostjanick, Director of CMMC, Department of Defense, Office of the Secretary, 1550 Cystal Drive, Suite 1000–A, Arlington, VA 22202, Phone: 703 604–3167, Email: [osd.dibcsia@mail.mil](mailto:osd.dibcsia@mail.mil).

**RIN:** 0790–AK86

**DOD—08**

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

**Priority:** Other Significant.

**Legal Authority:** Pub. L. 117–81

**CFR Citation:** 32 CFR 46.

**Legal Deadline:** Final, Statutory, December 27, 2022, Sec. 626 of the NDAA 2022 (Pub. L. 117–81). Section 626 of the NDAA 2022 (Pub. L. 117–81) requires publication of an interim final rule no later than one year after the date of the enactment of this Act.

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

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

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

**Alternatives:** The alternative is to take no action.

**Anticipated Cost and Benefits:** The cost to publish this new rule and update the Defense Department’s policies is estimated at \$900,000. This includes the public’s time to review the proposed rule and resources needed to respond to any public comments, publish the interim rule, revise policies, and possibly revamp the Navy and Coast Guard’s long-term case management programs.

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

**Timetable:**

Action	Date	FR Cite
Interim Final Rule	04/00/24	

**Regulatory Flexibility Analysis**

**Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** None.

**Agency Contact:** Lisiane Valentine, Department of Defense, Office of the Secretary, 4000 Defense Pentagon, Room 1C546, Washington, DC 20301, Phone: 571 372–5319, Email: [lisiane.m.valentine.civ@mail.mil](mailto:lisiane.m.valentine.civ@mail.mil)

**RIN:** 0790–AL56

**DOD—OS**

**Long-Term Actions**

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

**Priority:** Other Significant.

**CFR Citation:** 32 CFR 56.

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

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

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

This rule is being finalized under the authorities of title 29, U.S.C., chapter 16, subchapter V, sections 794 through 794d, codifying legislation prohibiting discrimination on the basis of disability under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Federal agency, including

provisions establishing the United States Access Board and requiring Federal agencies to ensure that information and communication technology is accessible to and usable by individuals with disabilities.

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

*Anticipated Cost and Benefits:* TBD.

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

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/16/20	85 FR 43168
NPRM Comment Period End.	09/14/20	
Final Action .....	11/00/24	

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Agency Contact:* Dr. Lisa Arfaa, Department of Defense, Office of the Secretary, 9999 Joint Staff Pentagon, Washington, DC 20318, *Phone:* 703 692-6878, *Email:* lisa.l.arfaa.civ@mail.mil. *RIN:* 0790-AJ04

**DOD—DEFENSE ACQUISITION REGULATIONS COUNCIL (DARC)**

Proposed Rule Stage

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

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

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

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

*Legal Deadline:* None.

*Abstract:* DoD is amending an interim rule to implement the CMMC framework 2.0 in order to protect against the theft of intellectual property and sensitive information from the Defense Industrial Base (DIB) sector. The CMMC framework, as defined in Title 32 of the Code of Federal Regulations (CFR), assesses compliance with applicable information security requirements. This rule provides the Department with assurances that a DIB contractor can adequately protect sensitive unclassified information at a level commensurate with the risk, accounting for information flow down to its subcontractors in a multi-tier supply chain.

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

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

*Alternatives:* DoD considered and adopted several alternatives during the development of the interim rule that reduced the burden on small entities and still meet the objectives of the rule. DoD will consider similar alternatives for the amendment rule. One alternative considered includes exempting contracts and orders exclusively for the acquisition of commercially available off-the-shelf items.

*Anticipated Cost and Benefits:* The annualized value of costs beginning in fiscal year 2021 (calculated in perpetuity in 2016 dollars at a 7 percent discount rate) associated with implementing the CMMC Framework in the published interim rule is \$4 billion. The cost analysis for CMMC 2.0 is being handled in the Title 32 CFR rule (RIN 0790–AL49). The primary benefit of this rule is improving the protection of the Department's sensitive information and reducing the threat to DIB sector intellectual property by:

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

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

*Timetable:*

Action	Date	FR Cite
Interim Final Rule ...	09/29/20	85 FR 48513
Interim Final Rule Effective.	11/30/20	
NPRM .....	03/00/24	

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Federal.

*Public Compliance Cost:* Base Year for Dollar Estimates: \$2,021.

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

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

*RIN:* 0750–AK81



**DOD—DARC****24. Modification of Prize Authority for Advanced Technology Achievements (DFARS Case 2022–D014) [0750–AL65]**

*Priority:* Other Significant.

*Legal Authority:* 41 U.S.C. 1303; 10 U.S.C. 4025; Pub. L. 117–81, sec. 822  
*CFR Citation:* 48 CFR 235.

*Legal Deadline:* None.

*Abstract:* DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to implement section 822 of the National Defense Authorization Act for Fiscal Year 2022, which revises 10 U.S.C. 2374a, redesignated as 10 U.S.C. 4025, regarding the award of prizes for advanced technology achievement to: (1) authorize the award of procurement contracts and other agreements “as in other type of prize” (as in other than cash prizes); (2) permit the award of prizes, including procurement contracts and other agreements, in excess of \$10,000,000 with the approval of the Under Secretary of Defense for Research and Engineering; and (3) require DoD provide Congress with notice of an award of a procurement contract or other agreement under this program that exceeds \$10 million.

*Statement of Need:* This rule is necessary to implement section 822 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81). Section 822 revises 10 U.S.C. 2374a, redesignated as 10 U.S.C. 4025, regarding the award of prizes for advanced technology achievement to: (1) authorize the award of procurement contracts and other agreements as an other type of prize (as in other than cash prizes); (2) permit the award of prizes, including procurement contracts and other agreements, in excess of \$10,000,000 with the approval of the Under Secretary of Defense for Research and Engineering; and (3) require DoD provide Congress with notice of an award of a procurement contract or other agreement under this program that exceeds \$10 million.

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

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

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

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

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/24	

*Regulatory Flexibility Analysis Required:* Undetermined.

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

*RIN:* 0750–AL65

**DOD—DARC**

Final Rule Stage

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

*Priority:* Other Significant.

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

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

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

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

*Statement of Need:* This rule is necessary to implement section 823 of

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

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

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

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

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

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/20/21	86 FR 27358
NPRM Comment Period End.	07/19/21	
Final Action .....	07/00/24	

*Regulatory Flexibility Analysis*

*Required:* No.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Federal.  
*Agency Contact:* Jennifer D. Johnson, Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense, Defense Acquisition Regulations Council, Defense Pricing and Contracting,

Defense Acquisition Regulations System, Room 3B938, 3060 Pentagon, Washington, DC 20301–3060, Phone: 703 717–8226, Email: jennifer.d.johnson1.civ@mail.mil. RIN: 0750–AK16

## DOD—DARC

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

*Priority:* Other Significant.  
*Legal Authority:* 41 U.S.C. 1303  
*CFR Citation:* 48 CFR 227; 48 CFR 252.

*Legal Deadline:* None.

*Abstract:* DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement changes related to data rights in the Small Business Administration's Policy Directive for the Small Business Innovation Research (SBIR) Program, published in the **Federal Register** on April 2, 2019 (84 FR 12794). The final SBA Policy Directive includes several revisions to clarify data rights, which require corresponding revisions to the DFARS.

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

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

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

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

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

#### Timetable:

Action	Date	FR Cite
ANPRM .....	08/31/20	85 FR 53758
Correction .....	09/21/20	85 FR 59258
ANPRM Comment Period End.	10/30/20	
Comment Period Extended.	12/04/20	85 FR 78300
ANPRM Comment Period End.	01/31/21	
NPRM .....	12/19/22	87 FR 77680
Correction .....	12/23/22	87 FR 78911
Comment Period Extended.	02/14/23	88 FR 9420
NPRM Comment Period End.	02/17/23	
NPRM Comment Period End.	03/20/23	
Final Action .....	02/00/24	

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* Federal.

*Agency Contact:* Jennifer D. Johnson, Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense, Defense Acquisition Regulations Council, Defense Pricing and Contracting, Defense Acquisition Regulations System, Room 3B938, 3060 Pentagon, Washington, DC 20301–3060, Phone: 703 717–8226, Email: jennifer.d.johnson1.civ@mail.mil. RIN: 0750–AK84

## DOD—DARC

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

*Priority:* Other Significant.  
*Legal Authority:* 41 U.S.C. 1303  
*CFR Citation:* 48 CFR 225; 48 CFR 252.

*Legal Deadline:* None.

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

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

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

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

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

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

#### Timetable:

Action	Date	FR Cite
NPRM .....	06/09/23	88 FR 37942
NPRM Comment Period End.	08/08/23	
Final Action .....	12/00/23	

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* Federal.

*Agency Contact:* Jennifer D. Johnson, Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense, Defense Acquisition Regulations Council, Defense Pricing and Contracting, Defense Acquisition Regulations System, Room 3B938, 3060 Pentagon, Washington, DC 20301–3060, Phone: 703 717–8226, Email: jennifer.d.johnson1.civ@mail.mil. RIN: 0750–AL74

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

Proposed Rule Stage

**28. Policy and Procedures for Processing Requests To Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 U.S.C. 408 [0710–AB22]***Priority:* Other Significant.*Legal Authority:* 33 U.S.C. 408*CFR Citation:* 33 CFR 350.*Legal Deadline:* None.

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

The Corps conducted six virtual listening sessions in the summer of 2022 to solicit feedback on the Section 408 program from Section 408 applicants and Non-federal partners. The feedback was helpful to understanding the challenges, best practices, and future opportunities with the Section 408 program and helped inform development of the proposed rule. Additional sessions will be conducted once the draft rule is published in the **Federal Register**. The Corps will widely publicize the dates and times of the additional listening sessions to Section 408 applicants, non-federal sponsors and partners by posting on Corps websites (the Corps HQ website can be found here: <https://www.usace.army.mil/Missions/Civil-Works/Section408/>) and utilize existing email distribution lists of interested parties.

*Statement of Need:* Through the Civil Works program, the U.S. Army Corps of Engineers (Corps), in partnership with

stakeholders, has constructed many Civil Works projects across the Nation's landscape. Given the widespread locations of these projects, others outside of the Corps sometimes want to alter or occupy these projects or the associated lands. Reasons for alterations could include activities such as improvements to the project; relocation of part of the project; or installing utilities or other non-project features. In order to ensure that these projects continue to provide their intended benefits to the public, Congress provided that any use or alteration of a Civil Works project by another party is subject to the prior approval of the Corps. This requirement was established in section 14 of the Rivers and Harbors Act of 1899 and is codified at 33 U.S.C. 408 (section 408). Specifically, section 408 provides that the Corps may grant permission for another party to alter a Civil Works project upon a determination that the alteration proposed will not be injurious to the public interest and will not impair the usefulness of the Civil Works project. The Corps is proposing to convert its policy that governs the section 408 program to a binding regulation. Engineer Circular 1165–2–220, Policy and Procedural Guidance for Processing Requests to Alter U.S. Army Corps of Engineers Civil Works Projects Pursuant to 33 U.S.C. 408 was issued in September 2018.

*Summary of Legal Basis:* The Corps operates the section 408 program under 33 U.S.C. 408.

*Alternatives:* The preferred alternative is to conduct rulemaking to issue the requirements governing the section 408 review process in the form of a binding regulation. The current Corps policy appears in an Engineer Circular that has expired. The next best alternative would involve issuing these requirements in the form of an Engineer Regulation. That alternative would not fulfill the intent of the law because it would not be binding on the regulated public.

*Anticipated Cost and Benefits:* The proposed rule would reduce costs to the regulated public by clarifying the applicable requirements and providing consistent implementation of these requirements nationwide across the Corps program. It is anticipated that a form would be developed for submission of requests which could help to reduce the cost to prepare a section 408 request.

*Risks:* The proposed action is not anticipated to affect the risk to public health, safety, or the environment. It would outline the procedures the Corps will follow when evaluating requests for section 408 permissions. The Corps will

comply with all statutory requirements when reviewing requests.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/24	

*Regulatory Flexibility Analysis**Required:* No.*Small Entities Affected:* No.*Government Levels Affected:* None.

*Agency Contact:* Virginia Rynk, Department of Defense, U.S. Army Corps of Engineers, Attn: CECW–EC, 441 G Street NW, Washington, DC 20314, Phone: 202 761–4741.

*RIN:* 0710–AB22**DOD–COE****29. Flood Control Cost-Sharing Requirements Under the Ability To Pay Provision [0710–AB34]**

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

*Unfunded Mandates:* Undetermined.*Legal Authority:* 33 U.S.C. 2213(m)*CFR Citation:* 33 CFR 241.*Legal Deadline:* None.

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

*Statement of Need:* The Corps will conduct rulemaking to propose amendments to the Corps' regulations at 33 CFR part 241 for Corps projects. The WRDA 2000 modified section 103(m) to include the projects with the following purposes: environmental protection and restoration, flood control, navigation, storm damage protection, shoreline erosion, hurricane protection, and recreation or an agricultural water supply project which have not yet been added to the regulation. It also included the opportunity to cost share all phases of a USACE project to also include feasibility studies in addition to the

already covered design and construction. This rule would update the framework for determining whether a project is eligible for consideration for a reduction in the non-Federal cost share based on ability to pay.

*Summary of Legal Basis:* 33 U.S.C. 2213(m).

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

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

*Risks:* The proposed action is not anticipated to affect risk to public health, safety, or the environment. It would outline the procedures the Corps will follow when evaluating the ability to pay provision for cost-sharing with the non-Federal sponsor.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/24	

#### *Regulatory Flexibility Analysis*

*Required:* Undetermined.

*Government Levels Affected:* None.

*Agency Contact:* Amy Frantz, Program Manager, Department of Defense, U.S. Army Corps of Engineers, CECW-P, 441 G Street NW, Washington, DC 20314, Phone: 202 761-0106, Email: amy.k.frantz@usace.army.mil.

*Related RIN:* Previously reported as 0710-AA91

*RIN:* 0710-AB34

#### **DOD—COE**

##### **30. USACE Implementing Procedures for Principles, Requirements, and Guidelines Applicable to Actions Involving Investment in Water Resources [0710-AB41]**

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

*Unfunded Mandates:* Undetermined. *Legal Authority:* sec. 2031 of Pub. L. 110-114

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* None.

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

The Department of the Army completed an outreach strategy and engagement effort through publication of a **Federal Register** notice in June 2022 on the PR&G. This engagement effort included an open docket for submission of comments, a series of virtual meetings with the public, and a series of virtual meetings with Tribes to solicit early input prior to embarking on a rulemaking action on agency specific procedures outlining how the Corps can best meet the policy goals of PR&G. The Corps will consider the input received during these engagements to inform the development of the proposed rule.

*Statement of Need:* The Corps is developing implementing procedures for the Principles, Requirements, and Guidelines (PR&G) under section 110 of the Water Resources Development Act of 2020.

*Summary of Legal Basis:* Section 110 of the Water Resources Development Act of 2020 provided for the Secretary of the Army to issue agency specific guidelines to implement the PR&G. Also see section 2031 of Public Law 110-114.

*Alternatives:* The Corps could implement PR&G with guidance rather than through rulemaking; however, such procedures would not be binding. As an alternative, the Corps could seek to rely solely on the PR&G documents to

implement PR&G in lieu of developing its own procedures. This could result in confusion and a lack of consistency for the Corps as to how and when it would apply the PR&G in the Civil Works program. The Corps decided to conduct this rulemaking to ensure the PR&G implementing procedures are clear for the Corps and the public as well as binding.

*Anticipated Cost and Benefits:* As this rulemaking is developing procedures for the Corps to implement to ensure compliance with the PR&G, there may be some administrative costs incurred to the Corps for implementation-related training. There also would be benefits that accrue to the public in some cases in the form of improved outcomes in Corps decisions related to proposed and ongoing water resource development projects.

*Risks:* The proposed action is not anticipated to increase risk to public health, safety, or the environment, but could potentially help to reduce such risks in some cases.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/00/23	

#### *Regulatory Flexibility Analysis*

*Required:* No.

*Government Levels Affected:* None.

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

*RIN:* 0710-AB41

#### **DOD—COE**

##### **31. Appendix C Procedures for the Protection of Historic Properties [0710-AB46]**

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

*Unfunded Mandates:* Undetermined.

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

*CFR Citation:* 33 CFR 325.

*Legal Deadline:* None.

*Abstract:* The U.S. Army Corps of Engineers (Corps) considers the effects of its actions on historic properties pursuant to section 106 of the National Historic Preservation Act (NHPA). The Corps' Regulatory Program's regulations for complying with the NHPA are outlined at 33 CFR 325 appendix C. Since these regulations were promulgated in 1990, there have been

amendments to the NHPA and revisions to the Advisory Council on Historic Preservation's (ACHP) regulations at 36 CFR part 800. In response, the Corps issued interim guidance until rulemaking could be completed in order to ensure full compliance with the NHPA and ACHP's regulations. The Corps proposes to revise its regulations to conform to the ACHP regulations.

The Department of the Army completed an outreach strategy and engagement effort through publication of a **Federal Register** notice in June 2022 to solicit comment on the best approach to modernize Appendix C. This engagement effort included an open docket for submission of comments, a series of virtual meetings with the public, and a series of virtual meetings with Tribes to solicit early input prior to embarking on a rulemaking action on Appendix C. The input received from these efforts will help inform this action.

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

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

*Alternatives:* The preferred alternative is to remove the Regulatory Program's implementing regulations (*i.e.*, appendix C) from its permitting regulations and instead follow the ACHP's NHPA implementing regulations. Other alternatives considered include retaining the current appendix C, which does not reflect the current versions of the NHPA or the ACHP implementing regulations for federal agencies or current Federal policies regarding Tribal Nations. Another alternative is to modify Appendix C by incorporating changes made since 1990 to the NHPA and the ACHP implementing regulations.

*Anticipated Cost and Benefits:* As this rulemaking action is implementing procedures for the Corps to ensure compliance with the NHPA, there may be some administrative costs incurred to the Corps for training. There would be benefits accrued to the public in the form of reduced confusion and

assurance of consideration of potential adverse effects to historic properties and items and areas of cultural/religious significance.

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

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/23	

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* None.

*Federalism:* Undetermined.

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

*RIN:* 0710-AB46

## DOD—COE

Final Rule Stage

### 32. Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers [0710-AA78]

*Priority:* Other Significant.

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

*CFR Citation:* 33 CFR 203.

*Legal Deadline:* None.

*Abstract:* The U.S. Army Corps of Engineers (Corps) is finalizing an update to the Federal regulation that covers the procedures that the Corps uses under section 5 of the Flood Control Act of 1941, as amended (33 U.S.C. 701n), commonly referred to as Public Law 84-99. The Corps relies on this program to prepare for, respond to, and help communities recover from a flood, hurricane, or other natural disaster, including the repair of damage to eligible flood risk reduction infrastructure. The Corps initiated this rulemaking process through an advanced notice of proposed rulemaking (ANPRM) on February 13, 2015. The Corps published a notice of proposed rulemaking (NPRM) on November 15, 2022. The NPRM included a summary of the comments to the ANPRM. The NPRM proposed to repeal the existing regulation and replace it with a new regulation that addresses statutory changes under

various Water Resources Development Act provisions, reflects lessons learned over the past 20 years, and incorporates agency policies now in guidance relating to natural disaster procedures.

In 2015, the Corps published an Advance Notice of Proposed Rule Making (ANPR) in the **Federal Register** for a 60 day public comment period on policy revision concepts being considered for 33 CFR part 203. The Corps then published proposed revisions to 33 CFR part 203 in the **Federal Register** with a public comment period from November 15, 2022 to January 17, 2023. The Corps hosted nine regional workshops in Kansas City, MO; Fort Worth, TX; Seattle, WA; Sacramento, CA; Chicago, IL; Rock Island, IL; New Orleans, LA; and Wilmington, NC; Concord, MA; and two webinars to solicit input from interested parties. The Corps also met with two Tribal Nations for direct consultation and input. The final rule will address the input received by the Corps through the comment and public engagement process.

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

*Summary of Legal Basis:* Public Law 84-99 authorizes an emergency fund to be expended at the discretion of the Chief of Engineers for preparation for natural disasters, flood fighting, rescue operations, repairing or restoring flood control works, emergency protection of federally authorized hurricane or shore protection projects, and the repair and restoration of federally authorized

hurricane and shore protection projects damaged or destroyed by wind, wave, or water of other than ordinary nature.

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

2. Subsection 3029(b) of WRRDA 2014 authorized the Secretary of the Army to undertake a review of implementation of Public Law 84–99 to improve the safety of affected communities to future flooding and storm events; the resiliency of water resources development projects to future flooding and storm events; the long-term cost-effectiveness of water resources development projects that provide flood control and hurricane and storm damage reduction benefits; and achieve certain other policy goals and objectives.

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

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

Alternatives:

1. *No rule update:* Continue to implement all changes through agency guidance documents and agency discretion.

2. *Modify:* Incorporate in the rule only those changes related to changes in the program that the Congress has mandated in law.

3. *Repeal and replace (Selected Alternative):* Incorporate and integrate the current state of practice for flood risk management principles and concepts through the provision of agency policy codified in a federal rule. The intended benefit is to encourage broader community flood risk

management activities, as undertaken by non-Federal project sponsors. The rule alternative also consolidates recent Public Law 84–99 amendments into one comprehensive rule, ensuring the public understands how the Corps would implement them.

Anticipated Cost and Benefits:

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

*Risks:* The rule would repeal and replace the current 33 CFR 203 in order to reflect the current state of practice for flood risk management principles and concepts. It would also amend and clarify the current role of the Corps in preparing for, and responding a natural disaster, and in helping in the recovery effort. The rule may also encourage broader community flood risk management activities, as undertaken by non-Federal project sponsors.

Timetable:

Action	Date	FR Cite
ANPRM .....	02/13/15	80 FR 8014
ANPRM Comment Period End.	04/14/15	
NPRM .....	11/15/22	87 FR 68386
NPRM Comment Period End.	02/16/23	
Final Action .....	02/00/24	

Regulatory Flexibility Analysis Required: No.

Small Entities Affected: No.

Government Levels Affected: None.

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

RIN: 0710–AA78

DOD—COE

Completed Actions

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

Priority: Other Significant.

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

CFR Citation: 33 CFR 386.

Legal Deadline: None.

Abstract: The U.S. Army Corps of Engineers (Corps) issued a final rule to implement a new credit assistance program for dam safety work at non-Federal dams. The program is authorized under the Water Infrastructure Finance and Innovation Act of 2014 (WIFIA) and Division D, title 1 of the Consolidated Appropriations Act of 2020. WIFIA authorizes the Corps to provide secured (direct) loans and loan guarantees (Federal Credit instruments) to eligible water resources infrastructure projects and to charge fees to recover all or a portion of the Corps’ cost of providing credit assistance and the costs of conducting engineering reviews and retaining expert firms, including financial and legal services, to assist in the underwriting and servicing of Federal credit instruments. Projects will be evaluated and selected by the Secretary of the Army (the Secretary) based on the requirements and the criteria described in this rule.

*Statement of Need:* The Corps’ WIFIA program is focused on providing Federal loans, and potentially to also include loan guarantees, to projects for maintaining, upgrading, and repairing dams identified in the National Inventory of Dams owned by non-federal entities. These loans will be repaid with non-Federal funding.

*Summary of Legal Basis:* The Corps WIFIA program was authorized under subtitle C of title V of the Water Resources Reform and Development Act of 2014 (WRRDA 2014), which authorizes the Corps to provide secured (direct) loans, and potentially to also include loan guarantees, to eligible water resources infrastructure projects (needed further authorization was provided by Division D, title 1 of the Consolidated Appropriations Act of 2020). The statute also authorizes the Corps to charge fees to recover all or a portion of the Corps’ cost of providing credit assistance and the costs of conducting engineering reviews and retaining expert firms, including financial and legal services, to assist in the underwriting and servicing of Federal credit instruments.

The Fiscal 2021 Consolidated Appropriations Act, provided the Corps WIFIA appropriations of \$2.2M admin, and \$12M credit subsidy and a loan volume limit of \$950M. These appropriated funds are limited to fund projects focused on maintaining, upgrading, and repairing dams identified in the National Inventory of Dams owned by non-federal entities, essentially dams where the primary owner is a state, local government, public utility, or private owner.

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

**Anticipated Cost and Benefits:** The rule adds Corps procedures to the CFR on the implementation of a new credit program for dam safety work at non-Federal dams to allow for consistent implementation across the Corps and clear understanding of the program and its requirements by the regulated public. The USACE will incur costs to administer the loan program while benefits are expected for the public in the form of benefits from projects enabled by WIFIA loans. WIFIA compliance costs will likely include costs associated with application and transaction processing fees, which are waived or reduced for small and disadvantaged communities, obtaining a credit rating letter, any consultant fees (not required), completing applications, reporting requirements, and record keeping. These costs are not anticipated to represent a significant economic impact, especially given that participation in the program is voluntary.

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

**Timetable:**

Action	Date	FR Cite
NPRM .....	06/10/22	87 FR 35473
NPRM Comment Period End.	08/09/22	
Final Action .....	05/22/23	88 FR 32661
Final Action Effective.	06/21/23	

#### *Regulatory Flexibility Analysis*

**Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** None.

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

**Related RIN:** Merged with 0710-AB32

**RIN:** 0710-AB31

#### **DOD—COE**

##### **34. • Revised Definition of “Waters of the United States”; Conforming [0710-AB55]**

**Priority:** Other Significant.

**Legal Authority:** 33 U.S.C. 1251 *et seq.*

**CFR Citation:** 40 CFR part 120; 33 CFR part 328.

**Legal Deadline:** None.

**Abstract:** On September 8, 2023, the Environmental Protection Agency (EPA) and the Department of the Army (the agencies”) finalized a rule to amend the Code of Federal Regulations (CFR) to conform the definition of “waters of the United States” to a 2023 Supreme Court decision. This conforming rule amends the provisions of the agencies’ definition of “waters of the United States” that are invalid under the Supreme Court’s interpretation of the Clean Water Act in the 2023 decision.

**Statement of Need:** In April 2020, the EPA and the Department of the Army (“the agencies”) published the Navigable Waters Protection Rule that revised the previously codified definition of “waters of the United States” (85 FR 22250, April 21, 2020). The Navigable Waters Protection Rule was vacated by courts. On January 18, 2023, the agencies issued a final rule, “Revised Definition of “Waters of the United States”” (88 FR 3004) which became effective on March 20, 2023. On May 25, 2023, the U.S. Supreme Court issued its decision in the case of *Sackett v. Environmental Protection Agency*. In light of this decision, the agencies are interpreting the phrase waters of the United States consistent with the Supreme Court’s decision in *Sackett*. The agencies are developing a rule to amend the final “Revised Definition of ‘Waters of the United States’” rule,

published in the **Federal Register** on January 18, 2023, consistent with the U.S. Supreme Court’s decision in *Sackett*.

**Summary of Legal Basis:** The Clean Water Act (33 U.S.C. 1251 *et seq.*).

**Alternatives:** Please see EPA’s alternatives. EPA is the lead for this rulemaking action.

**Anticipated Cost and Benefits:** Please see EPA’s statement of anticipated costs and benefits. EPA is the lead for this rulemaking action.

**Risks:** Please see EPA’s risks. EPA is the lead for this rulemaking action.

**Timetable:**

Action	Date	FR Cite
Final Action .....	09/08/23	88 FR 61964
Final Action Effective.	09/08/23	

#### *Regulatory Flexibility Analysis*

**Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** None.

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

**Related RIN:** Related to 2040-AG32

**RIN:** 0710-AB55

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

Final Rule Stage

##### **35. TRICARE Coverage of Clinical Trials and Termination of Expanded Access Treatments [0720-AB83]**

**Priority:** Other Significant.

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

**CFR Citation:** 32 CFR 199.

**Legal Deadline:** None.

**Abstract:** The Department of Defense is finalizing an interim final rule to amend 32 CFR part 199 to include coverage that was temporarily added for National Institute of Allergy and Infectious Disease-sponsored clinical trials for the treatment or prevention of COVID-19. This rule will also finalize the temporary addition of the treatment use of investigation drugs under U.S. Food and Drug Administration-approved expanded access programs for the treatment of coronavirus disease 2019 (COVID-19) from the interim final rule titled “TRICARE Coverage of Certain Medical Benefits in Response to the COVID-19 Pandemic” (32 CFR part



199, 0720–AB82), which published in the **Federal Register** on September 3, 2020 (85 FR 54914–54924).

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

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

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

*Alternatives:*

(1) No action.

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

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

In the interim final rule, DoD estimated the total cost for TRICARE participation in NIAID-sponsored COVID–19 clinical trials would be \$3.2M for the duration of the national emergency, with an additional \$4.0M for continued care for beneficiaries enrolled in clinical trials prior to termination of the national emergency. There were several assumptions we made in developing this estimate. The duration of the COVID–19 national emergency is uncertain; however, for the purposes of this estimate, we assumed the national emergency would expire on September 30, 2021. As of the drafting of the IFR, there were 27 NIAID-sponsored COVID–19 clinical

trials begun since the start of the national emergency. We assumed 6.2 new trials every 30 days, for a total of 126 trials by September 2021. We assumed, based on average trial enrollment and that TRICARE beneficiaries would participate in trials at the same rate as the general population, that 4,549 TRICARE beneficiaries would participate through September 2021. Each of the assumptions in this estimate is highly uncertain, and our estimate could be higher or lower depending on real world events (more or fewer trials, a longer or shorter national emergency, and/or higher or lower participation in clinical trials by TRICARE beneficiaries).

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

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

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

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	10/30/20	85 FR 68753
Interim Final Rule	10/30/20	
Effective.		

Action	Date	FR Cite
Interim Final Rule	11/30/20	
Comment Period End.		
Final Action .....	02/00/24	

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Undetermined.

*Additional Information:* The interim final rule was titled “TRICARE Coverage of National Institute of Allergy and Infectious Disease Coronavirus Disease 2019 Clinical Trials.” The final rule will be titled “TRICARE Coverage of Clinical Trials and Termination of Expanded Access Treatments.”

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

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

*RIN:* 0720–AB83

**DOD—DODOASHA**

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

*Priority:* Other Significant.

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

*CFR Citation:* 32 CFR 199.

*Legal Deadline:* None.

*Abstract:* This rule finalizes an interim final rule that amended 32 CFR part 199 by: (1) adding freestanding End Stage Renal Disease (ESRD) facilities as a category of TRICARE-authorized institutional provider and modifying the reimbursement for such facilities; and (2) temporarily adopting Medicare’s New COVID–19 Treatments Add-on Payment (NCTAP). The ESRD provisions are permanent, and the temporary NCTAP provisions expire at the end of the fiscal year in which the Secretary of Health and Human Services’ declared coronavirus disease 2019 (COVID–19) public health emergency ends.

*Statement of Need:* Pursuant to the President’s emergency declaration and as a result of the COVID–19 pandemic, the Assistant Secretary of Defense for Health Affairs is temporarily modifying the following regulations (except for the modifications to paragraphs 199.6(b)(4)(xxi) and 199.14(a)(1)(iii)(E)(7), which will not expire), but, in each case, only to the extent necessary to ensure that

TRICARE beneficiaries have access to the most up-to-date care required for the prevention, diagnosis, and treatment of COVID-19, and that TRICARE continues to reimburse like Medicare, to the extent practicable, as required by statute.

The modifications to paragraphs 199.6(b)(4)(xxi) and 199.14(a)(1)(iii)(E)(7) establish freestanding End Stage Renal Disease (ESRD) facilities as a category of TRICARE-authorized institutional provider and modify TRICARE reimbursement of freestanding ESRD facilities. These provisions will improve TRICARE beneficiary access to medically necessary dialysis and other ESRD services and supplies. These provisions also support the requirement that TRICARE reimburse like Medicare, and will help to alleviate regional health care shortages due to the COVID-19 pandemic by ensuring access to dialysis care in freestanding ESRD facilities rather than hospital outpatient departments.

The modification to paragraph 199.14(a)(iii)(E) adopts Medicare's New COVID-19 Treatments Add-on Payment (NCTAP) for COVID-19 cases that meet Medicare's criteria. This provision increases access to emerging COVID-19 treatments and supports the requirement that TRICARE reimburse like Medicare.

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

**Alternatives:** (1) No action.

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

costs. Further, the flat rate will provide the ESRD facilities with predictability with regard to TRICARE payments and will reduce uncertainty and specialized coding or case-mix documentation requirements that may be required by the ESRD PPS, reducing the administrative burden on the provider.

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

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

This estimate includes approximately \$0.9M in administrative costs and \$5.9M in direct health care costs. \$1.8M of the total cost impact is expected to be a one-time start-up cost for both the temporary and permanent provisions, while the permanent ESRD provisions are expected to result in \$5M in incremental annual costs.

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

**Timetable:**

Action	Date	FR Cite
Interim Final Rule	01/12/23	88 FR 1992
Interim Final Rule Effective.	01/12/23	
Interim Final Rule Comment Period End.	03/13/23	
Final Action .....	06/00/24	

**Regulatory Flexibility Analysis**

**Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** None.

**Agency Contact:** Elan Green, Department of Defense, Office of Assistant Secretary for Health Affairs, 16401 East Centretch Parkway, Aurora, CO 80011, Phone: 303 676-3907, Email: [elan.p.green.civ@mail.mil](mailto:elan.p.green.civ@mail.mil).

**RIN:** 0720-AB85

## DOD—DODOASHA

### 37. Collection From Third Party Payers of Reasonable Charges for Healthcare Services; Amendment [0720-AB87]

**Priority:** Other Significant.

**Legal Authority:** NDAA 2021, sec. 716

**CFR Citation:** 32 CFR 220.

**Legal Deadline:** NPRM, Statutory,

June 21, 2023.  
**Abstract:** The Department of Defense, Defense Health Agency (DHA), is proposing a rule to implement Section 716 of the Fiscal Year 2023 National Defense Authorization Act (Pub. L. 117-263). Section 716, which provides new statutory language that supersedes language previously enacted in Section 702 of the Fiscal Year 2021 National Defense Authorization Act (Pub. L. 116-283), directs the Director of the DHA to implement a modified payment plan for certain civilians (who are not covered beneficiaries). This Section also provides the Director with the authority to waive fees for medical care provided to such civilians, when the provision of care enhances the knowledge, skills and abilities of health care providers.

**Statement of Need:** Due to the high cost of healthcare in the United States and the mandate to aggressively pursue collection of debts, some civilian non-beneficiaries who were provided emergency or trauma healthcare services in DoD MTFs have incurred financial harm after receiving MTF medical invoices. Other than the requirements of FCCS, the DoD did not have authority to provide FAPs like those offered by for-profit and non-profit hospitals which include elements such as sliding fees and catastrophic waivers. In consequence, Congress wholly amended 10 U.S.C. 1079b via section 716 of the FY 2023 NDAA. Section 716 directs DoD to apply a sliding fee and/or a catastrophic waiver to medical invoices of non-beneficiaries. For non-beneficiaries who have health insurance, section 716 directs DoD to accept payments from health insurers as full payment and to not balance bill non-beneficiaries except for copays, coinsurance, deductibles, nominal fees, and non-covered services. It also grants the Director of DHA discretionary authority, to waive medical debts of non-beneficiaries when the healthcare provided enhances the knowledge, skills, and abilities of healthcare providers, as determined by the Director of DHA.

**Summary of Legal Basis:** DoD's authority to compute reasonable charges for inpatient and ambulatory (outpatient) care provided by MTFs, including charges for pharmaceuticals, durable medical equipment, supplies,

immunizations, injections or other medications, is found at 32 CFR part 220, last updated on August 20, 2020 (55 FR 21742–21750). Medical billing is structured under three existing healthcare cost recovery programs: Third Party Collections (10 U.S.C. 1095); Medical Services Account (10 U.S.C. 1079b, 1085, and 1104); and Medical Affirmative Claims (42 U.S.C. 26512653). The rates used for billing are modeled after the rates published by the Centers for Medicare and Medicaid Services. The rates are approved annually by the Assistant Secretary of Defense for Health Affairs (ASD(HA)) and published on the DoD Comptroller's website at <https://comptroller.defense.gov/Financial-Management/Reports/rates2023/>. Funds collected through the healthcare cost recovery programs are used to enhance healthcare delivery at MTFs.

In carrying out the DoD's healthcare cost recovery programs, DoD abides by the Federal Claims Collection Standards (FCCS), under 31 CFR parts 900–904, which are published jointly by the Department of the Treasury and the Department of Justice. The FCCS require that Federal agencies aggressively collect all debts arising out of activities of that agency. Collection activities must be undertaken promptly with follow-up action taken as necessary. Accordingly, DoD MTFs generate medical claims and invoices for care rendered within MTFs and execute the FCCS requirements.

**Other Applicable Authority:** In accordance with 26 CFR 1.6050P–1(b)(2)(G), if DoD waives fees under 10 U.S.C. 1079b(b), then it would trigger information reporting requirements to the Internal Revenue Service (IRS) and the furnishing of Form 1099–C, Cancellation of Debt, to the patient since the discharge of indebtedness under 10 U.S.C. 1079b(b) qualifies as an identifiable event. Consequently, the waived medical fees could result in the debt being attributed to the patient as taxable income; and have the effect of causing severe financial harm. Therefore, DHA will consider a waiver of fees under 10 U.S.C. 1079b(b), only after any discounts according to the sliding scale and catastrophic cap have been applied. Any fees waived will be from the discounted amount, which will mitigate some of the financial impact of attributing the waived amount as income. Additionally, the DoD will seek to use that authority judiciously, on a case-by-case basis, and when other efforts such as application of a sliding and catastrophic waiver fail to mitigate the risk of severe financial harm to the civilian non-beneficiary.

**Alternatives:** The amended 10 U.S.C. 1079b mandates that DoD implement the amended statute within 180 days of the amendment being enacted. With this constrained timeline, the Department launched research efforts to discern whether private sector hospitals offered programs similar to what the statute mandates and which could potentially serve as a model for the Department. This research was necessary because prior to enactment of the amended 10 U.S.C. 1079b, the DoD did not have the authority to apply sliding scale or catastrophic waiver discounts to medical bills generated by MTFs, nor did the Director of DHA have discretionary authority to waive medical bills. Market research on charity care and FAPs offered by both for-profit and non-profit hospitals throughout the United States and eligibility requirements for those programs were reviewed. Of note, while for-profit and non-profit hospitals derive a tax benefit from the provision of charity care and FAPs, the DoD's hospitals do not. Research conducted yielded that while there are generally accepted accounting standards applicable to the financial reporting of charity and FAPs, there is no single standard, statute, or regulation that outlines the content and structure of those programs. Programs vary widely. The market research also included a review of the rules pertaining to eligibility for Federal and State FAPs such as Medicaid. The research provided a few alternatives for consideration in establishing the MHS FAP, including:

- **Alternative #1:** Generally, for-profit and non-profit hospitals determine a patient's eligibility for FAPs by measuring the applicant's annual household income against the Federal Poverty Guidelines (FPGs). The FPGs are published annually by the Department of Health and Human Services pursuant to 42 U.S.C. 9902(2). There is one set of FPGs for the contiguous 48 states and Washington DC, one set for Alaska, and another for Hawaii. The Census Bureau annually publishes FPG thresholds. The threshold is a statistical calculation used to identify the number of people living in poverty. There is no geographic variation; the same figures are used for all 50 states and Washington, DC. The Office of Management and Budget (OMB) designates the Census Bureau poverty thresholds as the Federal Government's official statistical definition of poverty. The FPGs are also used by State and Federal agencies for determining an individual's eligibility for Federal programs such as Medicaid.

- **Alternative #2:** Both for-profit and non-profit hospitals typically offer a sliding fee discount based upon the patient's household income when compared to the FPGs. Predominantly, discounts are offered to individuals whose household income falls within the range of 125% to 400% of the FPGs, with most hospitals offering discounts to patients whose income is at or below 200% of the FPGs.

- **Alternative #3:** Most private sector hospitals do not offer a catastrophic waiver policy, but a few will limit a patient's bill to a maximum percentage of the patient's household income (range of 10 to 20 percent of monthly income). In addition, we examined the Department of the Treasury's Administrative Wage Garnishment policy to determine the maximum percentage that the Treasury garnishes from an individual's monthly income (15 percent).

The three alternatives uncovered through market research represent fair and reasonable approaches that could readily be adopted for use in the administration of the MHS FAP, with some modifications, and without incurring significant costs to implement. Specifically:

**Alternative #1:** Adopted. Since 10 U.S.C. 1079b mandates the application of a sliding scale and catastrophic waivers, the FPGs will be used as the measure to determine a patient's eligibility for these discounts.

**Alternative #2:** Adopted. The FPG range for eligibility for the sliding scale discount will be set annually by policy issued by the ASD(HA). The range will be published on the DoD Comptroller's Reimbursement Rates website. Reserving the ability to set the range via policy gives DoD maximum flexibility to mitigate financial harm.

**Alternative #3:** Adopted. The catastrophic waiver will be limited to a percentage of a patient's monthly household income. The percentage will be established by policy issued annually by the ASD(HA). The percentage will be published on the DoD Comptroller's Reimbursement Rates website. Reserving the ability to set the percentage via policy gives DoD maximum flexibility to mitigate financial harm.

#### **Anticipated Cost and Benefits:**

**Benefit Cost Analysis:** The anticipated costs for the MHS Financial Assistance and Waiver Program include only the time required for a patient's application to be reviewed. This includes time required for a civilian non-beneficiary patient to complete the associated DD Form 3857, Application for Military Health System Financial Assistance

Program/Waiver Program, declaring their income, DHA UBO and associated agencies to receive and assess the application, followed by the determination of the eligibility for a sliding scale discount, catastrophic waiver, or debt cancellation waiver, and the response time for the decision. The total estimated time is less than 90 days.

**Risks:** Currently, Federal debt collection legislation and policies can lead to serious financial harm to some civilian non-beneficiary patients who receive treatment at MTFs. Delays in implementation of this rule could potentially exacerbate these problems.

**Timetable:**

Action	Date	FR Cite
Interim Final Rule	03/00/24	

**Regulatory Flexibility Analysis Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** None.

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

In developing and implementing regulations, guidance, technical assistance, evaluations, data gathering and reporting, and monitoring related to our programs, we are committed to working closely with affected persons and groups. Our core mission includes serving the most vulnerable, and facilitating equal access for all, to ensure all students receive a high-quality and safe education and complete it with a well-considered and attainable path to a sustainable career. Toward these ends, we work with a broad range of interested parties and the general public, including families, students, and educators; State, local, and Tribal governments; other Federal agencies; and neighborhood groups, community-based early learning programs, elementary and secondary schools, postsecondary institutions, rehabilitation service providers, adult education providers, professional associations, civil rights organizations, nonprofits, advocacy organizations, businesses, and labor organizations.

If we determine that it is necessary to develop regulations, we can seek public participation at the key stages in the rulemaking process. We invite the public to submit comments on all proposed regulations through the internet or by regular mail. We also continue to seek greater public participation in our rulemaking activities through the use of transparent and interactive rulemaking procedures and new technologies. For example, on June 7–11, 2021, we sought public input through a virtual public hearing on Title IX of the Education Amendments of 1972. We hosted this hearing to provide a forum for all of our stakeholders and other members of the public, including those from underserved communities, to share their experiences, insights, and expertise on Title IX. The information shared during this helped us determine changes to propose to the regulations

regarding Title IX. Additionally, on January 11, 2023, we published a Request for Information (RFI) on Regarding Public Transparency for Low-Financial-Value Postsecondary Programs. For this RFI, we solicited public comments from stakeholders and members of the public, including those from underserved communities, on how to identify the best ways to calculate the metrics that may be used to identify low-financial-value programs and inform technical considerations. We also note that the Higher Education Act of 1965 requires the Department to use the negotiated rulemaking process for a majority of its higher education rulemakings, which is a process that necessitates public participation from a broad range of stakeholders. Additionally, at the end of each day during the negotiated rulemaking sessions, the Department provides an opportunity for members of the public who are not at the negotiating table to speak and provide input. The Department has exclusively used virtual negotiated rulemaking sessions for these higher education regulations since 2021. Hosting virtual meetings instead of in-person sessions has significantly expanded the ability to draw in robust public comment from across the country, as the time commitment is more manageable and does not require traveling in order to participate.

The Department has also taken steps to seek public input on the development of guidance documents. On February 15, 2023, we announced that we would conduct a review of existing guidance related to a statutory provision about how institutions of higher education may compensate recruiters. To engage public participation we held a virtual public hearing on this topic on March 8 and 9, 2023. This gave dozens of members of the public a chance to express their opinions before the Department took any formal steps through guidance. We also sought public comment on this topic, which yielded nearly 270 comments. This approach allowed the Department to get thoughts from the public at the pre-drafting stage and will assist in gauging what changes, if any, to make to this guidance.

To facilitate the public's involvement, we participate in the Federal Docket Management System (FDMS), an electronic single Government-wide access point ([www.regulations.gov](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 plans to propose regulations to provide debt relief to student loan borrowers. Specifically, the Department is working on regulations to better clarify the use of the Secretary's authority to waive some or all of a borrower's outstanding balance on a Federal student loan, pursuant to Section 432(a)(6) of the Higher Education Act of 1965, as amended. Negotiation sessions are taking place during the fall of 2023, with draft and final rules expected next year.

### *Civil Rights/Title IX*

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

### *Student Privacy*

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

### *Grants*

The Department plans to propose revisions to the Education Department General Administrative Regulations (EDGAR) to make a variety of updates and revisions, including to update and clarify evidence-related components, to clarify how the Department makes determinations related to continuation awards under competitive grant programs, and to expand flexibility for grantees by clarifying that, where not prohibited by law or the terms and conditions of the grant award, subgranting authority rests with States. These proposed changes would ensure that the EDGAR regulations are

consistent with current law and would reduce or eliminate unnecessary burdens and restrictions.

### *Recently Completed Rulemakings*

Additionally, the Department has recently concluded its Improving Income Driven Repayment and Gainful Employment rulemakings. For Improving Income Driven Repayment, the Department issued final regulations governing income-contingent repayment plans by amending the Revised Pay as You Earn repayment plan and restructuring and renaming the repayment plan regulations under the William D. Ford Federal Direct Loan Program, including combining the Income Contingent Repayment and the Income-Based Repayment plans under the umbrella term of "Income-Driven Repayment" plans, and providing conforming edits to the FFEL Program. For Gainful Employment, the Department published final regulations that determine whether postsecondary educational programs prepare students for gainful employment in recognized occupations, and the conditions under which programs remain eligible for student financial assistance programs under Title IV of the HEA. The Department also published final regulations on Financial Responsibility, Administrative Capability, Certification, and Ability to Benefit.

## III. Principles for Regulating

Over the next year, we may need to issue other regulations because of new legislation or programmatic changes. In doing so, we will follow the Principles for Regulating, which determine when and how we will regulate. Through consistent application of those principles, we have eliminated unnecessary regulations and identified situations in which major programs could be implemented without regulations or with limited regulatory action.

In deciding when to regulate, we consider the following:

- Whether regulations are essential to promote quality and equality of opportunity in education.
- Whether a demonstrated problem cannot be resolved without regulation.
- Whether regulations are necessary to provide a legally binding interpretation to resolve ambiguity.
- Whether entities or situations subject to regulation are similar enough that a uniform approach through regulation would be meaningful and do more good than harm.
- Whether regulations are needed to protect the Federal interest, that is, to ensure that Federal funds are used for

their intended purpose and to eliminate fraud, waste, and abuse.

In deciding how to regulate, we are mindful of the following principles:

- Regulate no more than necessary.
- Minimize burden to the extent possible and promote multiple approaches to meeting statutory requirements if possible.
- Encourage coordination of federally funded activities with State and local reform activities.
- Ensure that the benefits justify the costs of regulating.
- To the extent possible, establish performance objectives rather than specify the behavior or manner of compliance a regulated entity must adopt.
- Encourage flexibility, to the extent possible and as needed to enable institutional forces to achieve desired results.

## ED—OFFICE FOR CIVIL RIGHTS (OCR)

Final Rule Stage

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

*Priority:* Other Significant.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 20 U.S.C. 1681 *et seq.*

*CFR Citation:* 34 CFR 106.

*Legal Deadline:* None.

*Abstract:* The Department plans to issue a final rule amending its regulations implementing Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, consistent with the priorities of the Biden-Harris Administration. These priorities include those set forth in Executive Order 13988 on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation and Executive Order 14021 on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation and Gender Identity. The proposed amendments include, among others, revisions to 34 CFR 106.2 (Definitions), 106.6 (Effect of other requirements and preservation of rights), 106.8 (Designation of coordinator, dissemination of policy, and adoption of grievance procedures), 106.10 (Scope), 106.11 (Application), 106.30 (Definitions), 106.31 (Education programs or activities), 106.40 (Parental, family, or marital status; pregnancy or related conditions), 106.44 (Action by a recipient to operate its education program or activity free from sex discrimination), 106.45 (Grievance

procedures for the prompt and equitable resolution of complaints of sex discrimination), 106.46 (Grievance procedures for the prompt and equitable resolution of complaints of sex-based harassment involving student complainants or student respondents at postsecondary institutions); 106.51 (Employment), 106.57 (Parental, family, or marital status; pregnancy or related conditions), 106.60 (Pre-employment inquiries), and 106.71 (Retaliation).

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

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

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

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

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

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/12/22	87 FR 41390
NPRM Comment Period End.	09/12/22	
Final Action .....	03/00/24	

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* State.

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

*URL For Public Comments:* [www.regulations.gov](http://www.regulations.gov).

*Agency Contact:* Alejandro Reyes, Department of Education, Office for Civil Rights, 400 Maryland Avenue SW, 5A-137, Washington, DC 20202, Phone: 202 245-7705, Email: [t9nprm@ed.gov](mailto:t9nprm@ed.gov).

*RIN:* 1870-AA16

## ED—OCR

### 39. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance: Sex-Related Eligibility Criteria for Male and Female Athletic Teams [1870-AA19]

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

*Legal Authority:* 20 U.S.C. 1681 *et seq.*

*CFR Citation:* 34 CFR 106.

*Legal Deadline:* None.

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

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

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

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

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

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

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/13/23	88 FR 22860
NPRM Comment Period End.	05/15/23	
Final Rule .....	03/00/24	

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* State.

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

*URL For Public Comments:* [www.regulations.gov](http://www.regulations.gov).

*Agency Contact:* Alejandro Reyes, Department of Education, Office for Civil Rights, 400 Maryland Avenue SW, Room 5A-137, Washington, DC 20202, Phone: 202 245-7705, Email: [t9nprm@ed.gov](mailto:t9nprm@ed.gov).

*RIN:* 1870-AA19

**ED—OFFICE OF PLANNING,  
EVALUATION AND POLICY  
DEVELOPMENT (OPEPD)**

## Proposed Rule Stage

**40. EDGAR Revisions (Rulemaking  
Resulting From a Section 610 Review)  
[1875-AA14]**

*Priority:* Section 3(f)(1) Significant.  
Major under 5 U.S.C. 801.

*Legal Authority:* 20 U.S.C. 1221e-3 and 3474, and 6511(a); E.O. 13559; 20 U.S.C. 1101 *et seq.*; 20 U.S.C. 1057 *et seq.*; 20 U.S.C. 1062; 20 U.S.C. 1063a; 20 U.S.C. 1065; 20 U.S.C. 1069c; 20 U.S.C. 1134 to 1134d

*CFR Citation:* 34 CFR 75; 34 CFR 76; 34 CFR 77; 34 CFR 299; and other sections as applicable; 34 CFR 79; . . .

*Legal Deadline:* None.

*Abstract:* The Education Department General Administrative Regulations (EDGAR) will be revised to make a variety of updates and revisions, including to update and clarify evidence-related components, to clarify how the Department makes determinations related to continuation awards under competitive grant programs, and to expand flexibility for grantees by clarifying that, where not prohibited by law or the terms and conditions of the grant award, subgranting authority rests with States. In addition, the Department plans to amend these regulations where they are outdated in order to be consistent with current law.

*Statement of Need:* It is necessary to review and revise these regulations to ensure they are consistent with current law and to reduce or eliminate unnecessary burdens and restrictions.

*Summary of Legal Basis:* We are conducting this rulemaking under the following authorities: 20 U.S.C. 1221e-3 and 3474, and 6511(a); E.O. 13559; 20 U.S.C. 1101 *et seq.*; 20 U.S.C. 1057 *et seq.*; 20 U.S.C. 1062, 1063a, 1065, and 1069c; 20 U.S.C. 1134–1134d.

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

*Anticipated Cost and Benefits:* We have limited information about the potential cost and benefits and cannot estimate at this time.

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

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/00/23	

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* Undetermined.

*URL For Public Comments:*

[www.regulations.gov](http://www.regulations.gov).

*Agency Contact:* Kelly Terpak, Department of Education, Office of Planning, Evaluation and Policy Development, 400 Maryland Avenue SW, Washington, DC 20202, *Phone:* 202 205–5321, *Email:* [kelly.terpak@ed.gov](mailto:kelly.terpak@ed.gov).  
*RIN:* 1875-AA14

**ED—OPEPD****41. Family Educational Rights and  
Privacy Act [1875-AA15]**

*Priority:* Other Significant.

*Legal Authority:* 20 U.S.C. 1232g; 20 U.S.C. 1221e-3; 20 U.S.C. 3474

*CFR Citation:* 34 CFR 99.

*Legal Deadline:* None.

*Abstract:* The Department plans to propose to amend the Family Educational Rights and Privacy Act (FERPA) regulations, 34 CFR part 99, to update, clarify, and improve the current regulations by addressing outstanding policy issues, such as clarifying the definition of “education records” and clarifying provisions regarding disclosures to comply with a judicial order or subpoena. The proposed regulations are also needed to implement statutory amendments to FERPA contained in the Uninterrupted Scholars Act of 2013 and the Healthy, Hunger-Free Kids Act of 2010, to reflect a change in the name of the office designated to administer FERPA, and to make changes related to the enforcement responsibilities of the office concerning FERPA.

*Statement of Need:* These regulations are needed to implement amendments to FERPA contained in the Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111296) and the Uninterrupted Scholars Act (USA) of 2013 (Pub. L. 112278); to provide needed clarity regarding the definitions of terms and other key provisions of FERPA; and to make necessary changes identified as a result of the Department’s experience administering FERPA and the current regulations. A number of the proposed changes reflect the Department’s existing guidance and interpretations of FERPA.

*Summary of Legal Basis:* These regulations are being issued under the authority provided in 20 U.S.C. 1221e-3, 20 U.S.C. 3474, and 20 U.S.C. 1232g.

*Alternatives:* These are discussed in the preamble to the proposed regulations.

*Anticipated Cost and Benefits:* These are discussed in the preamble to the proposed regulations.

*Risks:* These are discussed in the preamble to the proposed regulations.  
*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/24	

*Regulatory Flexibility Analysis*

*Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*URL For Public Comments:*

[www.regulations.gov](http://www.regulations.gov).

*Agency Contact:* Dale King, Department of Education, Office of Planning, Evaluation and Policy Development, 400 Maryland Avenue SW, Room 6C100, Washington, DC 20202, *Phone:* 202 453–5943, *Email:* [dale.king2@ed.gov](mailto:dale.king2@ed.gov).  
*RIN:* 1875-AA15

**ED—OFFICE OF POSTSECONDARY  
EDUCATION (OPE)**

## Proposed Rule Stage

**42. • Student Loan Relief [1840-AD93]**

*Priority:* Section 3(f)(1) Significant.  
Major under 5 U.S.C. 801.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 20 U.S.C. 1082(a)

*CFR Citation:* 34 CFR 30.1(c)(6); 34 CFR 30; 34 CFR 682; 34 CFR 685.

*Legal Deadline:* None.

*Abstract:* The Department intends to amend regulations related to the authorities granted to the Secretary under 20 U.S.C. 1082(a) of the Higher Education Act of 1965, as amended, to provide relief to Federal student loan borrowers.

*Statement of Need:* This rulemaking is necessary to provide debt relief to the numerous working and middle class student loan borrowers.

*Summary of Legal Basis:* We are conducting this rulemaking under the authority in 20 U.S.C. 1082(a).

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

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

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

*Timetable:*

Action	Date	FR Cite
Notice of Intent to Commence Negotiated Rule-making.	08/31/23	88 FR 60163
NPRM .....	05/00/24	



*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Undetermined.

*Federalism:* Undetermined.

*URL For Public Comments:*

[www.regulations.gov](http://www.regulations.gov).

*Agency Contact:* Tamy Abernathy, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, 2C–232, Washington, DC 20202, *Phone:* 202 987–0385, *Email:* [tamy.abernathy@ed.gov](mailto:tamy.abernathy@ed.gov).

*RIN:* 1840–AD93

## ED—OPE

### Completed Actions

#### 43. Gainful Employment [1840–AD57]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect the private sector under Public Law 104–4.

*Legal Authority:* 20 U.S.C. 1001; 20 U.S.C. 1002; 20 U.S.C. 1003; 20 U.S.C. 1088; 20 U.S.C. 1091; 20 U.S.C. 1094; 20 U.S.C. 1099(b); 20 U.S.C. 1099(c); 20 U.S.C. 1082; . . .

*CFR Citation:* 34 CFR 668; 34 CFR 600.

*Legal Deadline:* None.

*Abstract:* The Secretary proposed regulations related to GE to address ongoing concerns about educational programs designed to prepare students for gainful employment in a recognized occupation, but that instead leave them with unaffordable amounts of student loan debt in relation to their earnings. We further seek to provide additional transparency by providing information about all academic programs at postsecondary institutions that are eligible under title IV of the Higher Education Act of 1965, as amended (HEA).

*Statement of Need:* This rulemaking is necessary to determine whether postsecondary educational programs prepare students for gainful employment and the conditions under which institutions and programs remain eligible for student financial assistance programs under Title IV of the HEA.

*Summary of Legal Basis:* We are conducting this rulemaking under the following authorities: 20 U.S.C. 1001; 20 U.S.C. 1002; 20 U.S.C. 1003; 20 U.S.C. 1088; 20 U.S.C. 1091; 20 U.S.C. 1094; 20 U.S.C. 1099(b); 20 U.S.C. 1099(c); and 20 U.S.C. 1082.

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

*Anticipated Cost and Benefits:* We have limited information about the

anticipated costs and benefits at this time.

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

*Timetable:*

Action	Date	FR Cite
Notice of Intent to Commence Negotiated Rule-making.	05/26/21	86 FR 28299
NPRM .....	05/19/23	88 FR 32300
NPRM Comment Period End.	06/20/23	
Final Action .....	10/10/23	88 FR 70004
Final Action Effective.	07/01/24	

*Regulatory Flexibility Analysis*

*Required:* No.

*Small Entities Affected:*

Organizations.

*Government Levels Affected:* None.

*URL For Public Comments:*

[www.regulations.gov](http://www.regulations.gov).

*Agency Contact:* Joe Massman, Program Manager, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue, Washington, DC 20202, *Phone:* 202 453–7771, *Email:* [joe.massman@ed.gov](mailto:joe.massman@ed.gov).

Gregory Martin, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, Room 2C136, Washington, DC 20202, *Phone:* 202 453–7535, *Email:* [gregory.martin@ed.gov](mailto:gregory.martin@ed.gov).

*RIN:* 1840–AD57

## ED—OPE

#### 44. Improving Income Driven Repayment [1840–AD81]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

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

*CFR Citation:* 34 CFR 685.

*Legal Deadline:* None.

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

*Statement of Need:* This rulemaking is necessary to make improvements to the income-driven repayment plans created under the ICR authority in the Higher Education Act of 1965 that allows the

Secretary to cap payments at a set share of a borrower's income.

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

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

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

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

*Timetable:*

Action	Date	FR Cite
Notice of Intent to Commence Negotiated Rule-making.	05/26/21	86 FR 28299
NPRM .....	01/11/23	88 FR 1894
NPRM Comment Period End.	02/10/23	
Final Action .....	07/10/23	88 FR 43820
Final Action Effective.	07/01/24	

*Regulatory Flexibility Analysis*

*Required:* No.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*URL For Public Comments:*

[www.regulations.gov](http://www.regulations.gov).

*Agency Contact:* Tamy Abernathy, Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, 2C–232, Washington, DC 20202, *Phone:* 202 987–0385, *Email:* [tamy.abernathy@ed.gov](mailto:tamy.abernathy@ed.gov).

*RIN:* 1840–AD81

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Statement of Regulatory and Deregulatory Priorities

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

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

and improve quality of life through innovations in science and technology.

The Department's regulatory activities are essential to achieving its critical mission and to implementing the President's clean energy and climate initiatives. Among other things, the Regulatory Plan and the Unified Agenda contain the rulemakings the Department will be engaged in during the coming year to fulfill the Department's commitment to meeting deadlines for issuance of energy conservation standards and related test procedures. The Regulatory Plan and Unified Agenda also reflect the Department's continuing commitment to cut costs, reduce regulatory burden, and increase responsiveness to the public. Additionally, DOE recognizes that public participation and community engagement are a crucial aspect of the Department's rulemaking process, as well as an important vehicle to assist the Department in streamlining its regulatory priorities. DOE's existing ex parte communication process provides an avenue for stakeholders and members of the public to meet with the Department to discuss regulatory practices, either during or not during a rulemaking. This process is intended to encourage the public to provide the Department with all information necessary to develop rules that advance public interest. The process serves to increase public participation in the Department's rulemaking activities and adds transparency to the development of any regulatory action.

#### **Energy Efficiency Program for Consumer Products and Commercial Equipment**

The Energy Policy and Conservation Act (EPCA) requires DOE to set appliance efficiency standards at levels that achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. The Department continues to follow its schedule for setting new appliance efficiency standards by both tackling its backlog of rulemakings with missed statutory deadlines and advancing rulemakings with upcoming statutory deadlines. In 2023, DOE published 40 actions relating to energy conservation standards, including 11 final actions; and 25 actions relating to test procedures, including 19 final rules. DOE tentatively plans to publish 20 additional actions relating to energy conservation standards and test procedures by the end of the year. These rulemakings are expected to save American consumers billions of dollars in energy costs over a 30-year timeframe.

Additionally, EPCA directs DOE to provide interested persons an opportunity to present oral and written comments on matters related to any energy conservation standard or test procedure proposed rule. DOE fulfills this obligation by organizing public meetings, held as webinars, as part of the rulemaking process. The meetings take place during the comment period, which provides the public time to review the proposed action prior to attending. During the meeting, a DOE representative presents an overview of the proposed action that may include a general discussion of the rulemaking background, legal authority for the action being taken, and a robust discussion of the proposed action. Participants are offered an opportunity to ask the DOE representative questions about the proposal in real time and may present a prepared statement during the meeting if requested. After the meeting, DOE releases a meeting transcript and considers any question or information presented by the public during the meeting in the next stage of the rulemaking along with the written comments submitted during the comment period. Interested members of the public may participate in these meetings by registering online.

The Department is highlighting one important energy conservation standard rule titled "Energy Conservation Standards for Consumer Water Heaters." For consumer water heaters, DOE estimates that energy savings for active mode operation (in terms of uniform energy factor) will be 27 quads over 30 years and that the cumulative net present value to total consumer benefits of the proposed standards for consumer water heaters will be between \$56 billion at a 7-percent discount rate and \$161 billion at a 3-percent discount rate. Additionally, the Department notes that two public meeting were held to satisfy EPCA's requirements that interested persons are provided an opportunity to present oral and written comments on matters related to this rulemaking. In April 2022, DOE held a public meeting to discuss a preliminary technical support document and participants included members from relevant trade organizations, representatives of investor-owned electric companies, energy efficiency organizations, and advocates for appliance standards. DOE held a second public meeting to discuss the proposed rule in September 2023. During both meetings, DOE provided an overview of the published rulemaking materials and took questions from attendees in real time. As part of the rulemaking process, DOE intends to

address any comment raised during the September meeting in a subsequent rulemaking material, along with all written comments submitted for the proposal.

#### **Federal Agency Leadership in Climate Change**

Beyond the appliance program, DOE is supporting Federal agency leadership in climate change in various ways, including in its "Clean Energy Rule for New Federal Buildings and Major Renovations" (Clean Energy Rule), which implements a provision of the Energy Independence and Security Act of 2007 (EISA) that requires the Department to establish revised-performance standards for the construction of all new Federal buildings, including commercial buildings, multi-family high-rise residential buildings, and low-rise residential buildings. As directed by EISA, this rule would require reductions in Federal agencies' on-site use of fossil fuels, and provides processes by which agencies can petition DOE for the downward adjustment of these targets for their buildings. For covered buildings for which design for construction or whole building renovation begins in fiscal year 2030 or beyond, the onsite fossil fuel-generated energy consumption of the building must be zero for all building types and climate zones, based on the calculation established in the regulations, and consistent with the requirements of EISA. DOE initiated this rulemaking in 2010, and published its current proposal through a supplemental notice of proposed rulemaking (SNOPR) published in the **Federal Register** in December of 2022. DOE hosted a public stakeholder meeting (January 2022) to present its updated proposal and accept feedback from stakeholders. DOE also solicited formal public comments from stakeholders through March (2023), receiving 49 comment submissions, which will be addressed in DOE's Final Rule (anticipated March 2024).

#### **Federal Authorizations for Interstate Electric Transmission Facilities**

This rulemaking proposes to provide an updated process for the timely coordination of Federal authorizations for proposed interstate electric transmission facilities pursuant to section 216(h) of the Federal Power Act (FPA) (16 U.S.C. 824p(h)). The U.S. Department of Energy (DOE) is proposing to establish an integrated and comprehensive Coordinated Interagency Transmission Authorizations and Permits Program (CITAP Program), to ensure electric transmission projects are

developed expeditiously and consistent with the nation's environmental laws, including laws that protect endangered and threatened species, critical habitats, and historic properties. The CITAP Program improves the Integrated Interagency Pre-Application (IIP) Process by ensuring timely submission of materials necessary for Federal authorizations and related environmental reviews. Under the program, project proponents develop resource reports and public engagement plans for communities that would be affected by a proposed qualifying project through an iterative and collaborative process with Federal agencies, while providing that those Federal agencies would remain responsible for completion of environmental review. DOE will coordinate submission of the materials necessary for federal authorizations and related environmental reviews required under Federal law to site the qualified electric transmission facilities.

Throughout the rulemaking process, DOE has taken steps to encourage public participation in the rulemaking. On August 23, 2023, DOE held a public meeting for the proposed rulemaking in which DOE provided a briefing of the proposed regulatory text and gave participants the opportunity to provide comments on the proposed rule. Throughout the comment period, DOE has also provided briefings to various stakeholder groups and encouraged the submission of comments through the processes outlined in the notice of proposed rulemaking. Likewise, after the comment period closes on October 2, 2023, DOE intends to continue providing stakeholder briefings to groups wishing to learn more about the proposed rule.

## DOE—ENERGY EFFICIENCY AND RENEWABLE ENERGY (EE)

Final Rule Stage

### 45. Clean Energy for New Federal Buildings and Major Renovations of Federal Buildings [1904–AB96]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 42 U.S.C.

6834(a)(3)(D)

*CFR Citation:* 10 CFR 433; 10 CFR 435.

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

*Abstract:* This rulemaking implements provisions of the Energy Independence and Security Act of 2007 (EISA) that require the U.S. Department

of Energy (DOE) to establish revised-performance standards for the construction of all new Federal buildings, including commercial, multi-family high-rise residential and low-rise residential buildings. This rulemaking will specifically address the reduction of fossil fuel-generated energy consumption in new buildings and buildings undergoing major renovations, as well as how agencies may petition DOE for a downward adjustment of the requirements if they believe meeting required energy reduction levels would be technically impracticable. DOE has published a supplemental proposal with a new focus that accounts for the needs of Federal agencies and the goals of President Biden's Administration and responds to comments received on prior rulemaking documents. This document proposes standards that would require reductions in Federal agencies' on-site use of fossil fuels (which include coal, petroleum, natural gas, oil shales, bitumens, tar sands, and heavy oils) consistent with the targets of ECPA and EISA and provides processes by which agencies can petition DOE for the downward adjustment of said targets for buildings. DOE issued this effort was previously reported as the Fossil Fuel-Generated Energy Consumption Reduction for New Federal Buildings and Major Renovations of Federal Buildings rulemaking.

*Statement of Need:* The Energy Independence and Security Act of 2007 (EISA 2007) requires certain new Federal buildings and Federal buildings undergoing major renovations to meet fossil fuel-generated consumption reduction targets based on fiscal year.

*Summary of Legal Basis:* Section 433(a) of EISA 2007 (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 NPRM.	12/21/22	87 FR 78382
Public Meeting (webinar) held January 5, 2023.	12/21/22	87 FR 78382
Supplemental NPRM Comment Period End.	02/21/23	
Supplemental NPRM Comment Period Reopened.	02/27/23	88 FR 12267

Action	Date	FR Cite
Supplemental NPRM Comment Period Reopened End.	03/23/23	
Final Action .....	04/00/24	

#### *Regulatory Flexibility Analysis*

*Required:* No.

*Government Levels Affected:* Federal.

*URL For More Information:*

[www.energy.gov/eere/femp/notices-and-rules](http://www.energy.gov/eere/femp/notices-and-rules).

*URL For Public Comments:*

[www.regulations.gov](http://www.regulations.gov).

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*RIN:* 1904-AB96

## DOE—EE

### 46. Energy Conservation Standards for Consumer Water Heaters [1904-AD91]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect the private sector under Public Law 104-4.

*Legal Authority:* 42 U.S.C. 6295(m)(1)

*CFR Citation:* 10 CFR 430.

*Legal Deadline:* Other, Statutory, Subject to 6-year-look-back in 42 U.S.C. 6295(m)(1).

*Abstract:* Consistent with the requirements under the Energy Policy and Conservation Act (EPCA), as amended, the U.S. Department of Energy (DOE) is examining whether to amend the current energy conservation standards for consumer water heaters found at 10 CFR 430.32(d). Once completed, this rulemaking will fulfill DOE's statutory obligation to either propose amended standards for this product or determine that the standards do not need to be amended. In this rulemaking, DOE has tentatively concluded that the proposed standards represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in the significant conservation of energy. Specifically, with regards to technological feasibility, products achieving these proposed standard levels are already commercially available for all product classes covered by the proposal. As for economic justification, DOE's analysis shows that the benefits of the proposed standards exceed the burdens of the proposed standards.

*Statement of Need:* The Energy Policy and Conservation Act requires

minimum energy efficiency standards for certain appliances and commercial equipment, including consumer water heaters. (42 U.S.C. 6292(a)(4))

*Summary of Legal Basis:* Title III of the Energy Policy and Conservation Act (EPCA), Public Law 94-163 (42 U.S.C. 6291-6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles. Pursuant to EPCA, any new or amended energy conservation standard that the U.S. Department of Energy (DOE) prescribes for certain products, such as consumer water heaters, shall be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified (42 U.S.C. 6295(o)(2)(A)) and to result in a significant conservation of energy (42 U.S.C. 6295(o)(3)(B)). EPCA provides that not later the six years after the issuance of any final rule establishing or amending a standard, DOE must publish either a notice of determination that standards for the product do not need to be amended, or a notice of proposed rulemaking including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1))

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

*Anticipated Cost and Benefits:* DOE finds that the benefits to the Nation of the proposed energy conservation standards for Consumer Water Heaters (such as energy savings, consumer average life-cycle cost savings, an increase in national net present value, and emissions reductions) outweigh the burdens (such as loss of industry net present value). For consumer water heaters, DOE estimates that energy savings (in terms of uniform energy factor (UEF)) will be 27 quads over 30 years and that the cumulative net present value (NPV) of total consumer benefits of the proposed standards for consumer water heaters will be between \$56 billion at a 7-percent discount rate and \$161 billion at a 3-percent discount rate.

*Risks:* Optional field—no response.

*Timetable:*

Action	Date	FR Cite
Request for Information (RFI).	05/21/20	85 FR 30853
RFI Comment Period End.	07/06/20	
Notice of Webinar and Availability of Preliminary Technical Support Document.	03/01/22	87 FR 11327
Public Meeting ....	04/12/22	
Preliminary Technical Support Document Comment Period End.	05/02/22	
RFI Comment Period Reopened.	05/04/22	87 FR 26303
RFI Comment Period Reopened End.	05/16/22	
NPRM .....	07/28/23	88 FR 49058
Public Meeting ....	09/13/23	
NPRM Comment Period End.	09/26/23	
Final Action .....	04/00/24	

#### *Regulatory Flexibility Analysis*

*Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:*

Undetermined.

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*RIN:* 1904-AD91

## DOE—DEPARTMENTAL AND OTHERS (ENDEP)

Final Rule Stage

### 47. Coordination of Federal Authorizations for Electric Transmission Facilities [1901-AB62]

*Priority:* Other Significant.

*Legal Authority:* 16 U.S.C. 824p(h)

*CFR Citation:* 10 CFR part 900.

*Legal Deadline:* None.

*Abstract:* This rulemaking proposes to provide an updated process for the timely submission of information needed for Federal authorizations for proposed electric transmission facilities pursuant to section 216(h) of the Federal Power Act (FPA) (16 U.S.C. 824p(h)). It seeks to ensure electric transmission projects are developed consistent with the nation's environmental laws, including laws that protect endangered and threatened species, critical habitats, and historic properties. It provides a framework, called the Integrated Interagency Pre-Application (IIP) Process, by which the U.S. Department of Energy (DOE) will coordinate submission of materials necessary for

federal authorizations and related environmental reviews required under Federal law to site qualified electric transmission facilities, and integrates that IIP Process into the Federal Electric Transmission Authorization Coordination Program.

**Statement of Need:** To address capacity constraints and congestion on the nation's electric transmission grid, DOE is amending 10 CFR part 900 to establish a Coordinated Interagency Transmission Authorizations and Permits Program (CITAP Program) to reduce the time required for transmission project developers to receive decisions on Federal authorizations for interstate transmission projects.

**Summary of Legal Basis:** The Energy Policy Act of 2005 (Pub. L. 109–58) (EPAAct) established a national policy to enhance coordination and communication among Federal agencies with authority to site electric transmission facilities. Section 1221(a) of EPAAct added a new section 216 to part II of the Federal Power Act (16 U.S.C. 824p) (FPA), which sets forth provisions relevant to the siting of interstate electric transmission facilities. Section 216(h) of the FPA (16 U.S.C. 824p(h)), Coordination of Federal Authorizations for Transmission Facilities, requires the DOE to coordinate all Federal authorizations and related environmental reviews needed for siting interstate electric transmission projects, including National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended, 42 U.S.C. 4321 *et seq.*) (NEPA) reviews. In response to the investments made in clean energy by the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58) and the Inflation Reduction Act (IRA) (Pub. L. 117–169), DOE is proposing to amend its section 216(h) implementing regulations, found in 10 CFR part 900, to implement this authority and better coordinate review of Federal authorizations to expediently increase interstate electric transmission infrastructure.

**Alternatives:** The U.S. Department of Agriculture, Department of Commerce, Department of Defense, Department of Energy, the Environmental Protection Agency, the Council on Environmental Quality, the Federal Permitting Improvement Steering Council, Department of the Interior, and the Office of Management and Budget Regarding Facilitating Federal Authorizations for Electric Transmission Facilities entered into a Memorandum of Understanding, executed May 2023, to expedite the siting, permitting, and construction of

electric transmission infrastructure in the United States under section 216(h) of the Federal Power Act (FPA), 16 U.S.C. 824p(h), as enacted by section 1221(a) of the Energy Policy Act of 2005, as such, alternatives were not considered.

**Anticipated Cost and Benefits:** The societal costs of the action are the direct costs incurred by project proponents during the IIP Process. Most of the information required to be submitted during the IIP Process would likely be required absent this proposal and therefore the investment of time and resources required by this proposed process are unlikely to be an additional burden on respondents. However, the full costs are considered for transparency. These costs of \$399,083 per year are detailed in the Paperwork Reduction Act burden analysis. The 10-year and 20-year net present value of those annual costs, assuming 2% annual inflation, are \$3.8 million and 7.2 million under a 3% discount rate, and \$3.1 million and 5.0 million under a 7% discount rate.

The benefits of the CITAP Program, designed to reduce the Federal authorization timelines for interstate electric transmission facilities and enable more rapid deployment of transmission infrastructure, include direct benefits to the project proponents in decreased time and expenditure on authorizations and a series of indirect social benefits. Increasing the current pace of transmission infrastructure deployment will generate benefits to the public in multiple ways that can be categorized into grid operations, system planning, and non-market benefits. Grid operation benefits include a reduction in the congestion costs for generating and delivering energy; mitigation of weather and variable generation uncertainty enhanced diversity of supply, which increases market competition and reduces the need for regional backup power options; and increased market liquidity and competition. From a system planning standpoint, accelerated transmission investments will allow the development of new, low-cost power plants in areas of high congestion which might not otherwise see investment due to capacity constraints, and additional grid hardening or resilience. Finally, non-market benefits to the public include reduced costs for meeting public policy goals related to emissions and equitable energy access, as well as emissions reductions system wide.

**Risks:** Optional field—no response.

**Timetable:**

Action	Date	FR Cite
NPRM .....	08/16/23	88 FR 55826
Notice of Public Meeting.	08/22/23	88 FR 57011
Public Meeting ....	08/23/23	
NPRM Comment Period End.	10/02/23	
Final Action .....	03/00/24	

#### *Regulatory Flexibility Analysis*

**Required:** No.

**Government Levels Affected:** Undetermined.

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**RIN:** 1901–AB62

**BILLING CODE** 6450–01–P

## DEPARTMENT OF HEALTH & HUMAN SERVICES

### Statement of Regulatory Priorities for Fiscal Year 2024

As the Federal agency with principal responsibility for protecting the health of all Americans and providing essential human services, the Department of Health and Human Services (HHS or the Department) implements programs that strengthen the health care system; advance scientific knowledge and innovation; and improve the health, safety, and wellbeing of the American people.

The Department's Regulatory Plan for Fiscal Year (FY) 2024 focuses on lowering costs and expanding coverage, reducing disparities and advancing equity, increasing public health preparedness, and supporting the wellbeing of families and communities. Highlights from the FY2024 Regulatory Plan include:

- Policies to expand access to affordable care and protect health coverage following the end of the COVID–19 public health emergency.
- Policies to strengthen Federal early care and education programs that enhance quality of services to children and families, lower child care costs for working families, and provide needed support to early educators.
- Advancing health and safety across the health care delivery system through policies and programs that promote health equity.
- Expanding access to the full continuum of mental health and substance use prevention, treatment, and recovery.
- Bolstering the Department's ability to identify and prevent future public health threats.

- Improving the Department's ability to identify foodborne illnesses and advancing work to improve consumers' ability to access nutritious food to prevent disease and protect public health.

- Strengthening services for older Americans to allow them to remain in their communities.

- Ensuring that children and youth receive safe and appropriate care and support in order to thrive.

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

### **I. Lowering Health Care Costs and Expanding Access to Coverage**

The Biden-Harris Administration has worked to expand and strengthen coverage for millions of Americans enrolled in Medicare, Medicaid, or ACA Marketplace plans. In implementing key provisions of the Inflation Reduction Act, HHS rules will help lower the cost of prescription drugs in Medicare. HHS has prioritized efforts to protect health coverage following the end of the COVID-19 public health emergency, working with State partners to make it easier for beneficiaries and consumers to stay covered.

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

Rulemaking related to Medicare, Medicaid, and the ACA Marketplaces will strengthen coverage under these programs and help make it easier for Americans to stay covered. In response to the President's Executive Orders to strengthen Medicaid and the ACA, HHS rules will simplify the enrollment process to help maintain continuous coverage for vulnerable populations and reduce administrative burdens for States, while improving access to care, quality, and health outcomes across delivery systems. HHS rules will set a minimum access standard in Medicaid and CHIP programs, advancing access to care for adult and pediatric populations in primary care, behavioral health, home and community-based services and maternal health.

In collaboration with the Departments of Labor and Treasury, HHS has issued proposed rules to improve the comprehensiveness of coverage and protect consumers from low-quality coverage. These rules will help to expand access to mental health and substance use care and preventive services as well as ensure that

consumers protected from buying coverage through Short-Term, Limited-Duration Insurance (STLDI) that provide little to no coverage and can discriminate against those with pre-existing conditions.

In addition, CMS will issue annual payment rules and notices over the next year that affect federal health programs, including Medicare and the ACA Marketplace. Though they are not included in the HHS Regulatory Plan, these rules will include policies that further the Secretary's priority of expanding access to affordable, high-quality health care.

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

Under the Inflation Reduction Act (IRA), HHS policy will allow Medicare to negotiate the cost of some drugs and provide coverage without cost sharing for recommended vaccines in the Medicare program. The IRA will require rebates if the cost of some Medicare Part B physician-administered drugs rise faster than the rate of inflation—reducing costs and increasing peace of mind for millions of older Americans and those with disabilities.

Consistent with the President's drug pricing priorities, revisions to the 340B Drug Pricing Program's (340B Program) Administrative Dispute Resolution (ADR) rule would establish new requirements and procedures for the Program's ADR process, making the process more equitable and accessible for participation, while supporting the Program's mission to expand access to health care for underserved communities.

#### *c. Streamlining the Secure Exchange of Health Information*

The secure exchange of health information and interoperability among health care providers and other entities improves patient care, promotes competition, reduces costs, and provides more accurate public health data. Upcoming HHS rulemaking will implement provisions of the 21st Century Cures Act to set out disincentives for health care providers who engage in information blocking, ensuring effective health information exchange and patient access to quality care. HHS will also issue proposed modifications to the HIPAA Security Rule to improve cybersecurity in the health care sector by strengthening requirements for HIPAA regulated entities to safeguard individuals' electronic protected health information to prevent, detect, contain, mitigate, and recover from cybersecurity threats.

### **II. Reducing Disparities and Advancing Equity**

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

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

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

Further, HHS continues to seek out meaningful and equitable opportunities for public input by a range of interested or affected individuals and communities, including underserved communities, to inform our regulatory actions consistent with Executive Order 14094, Modernizing Regulatory Review.

#### *a. Preventing and Remedying Discrimination*

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

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

Additionally, the Department has issued a proposed rule addressing discrimination on the basis of disability in health and human services programs or activities. This rule would revise regulations under section 504 of the Rehabilitation Act of 1973 to address unlawful discrimination on the basis of disability in HHS-funded health and human services programs. The proposed rule includes new requirements prohibiting discrimination in the areas of medical treatment; the use of value assessments; web, mobile, and kiosk accessibility; and requirements for accessible medical equipment, so that persons with disabilities have an opportunity to participate in or benefit from health care programs and activities that is equal to the opportunity afforded others. It also adds a section on child welfare to expand on and clarify the obligation to provide nondiscriminatory child welfare services. The proposed rule would also update the definition of disability and other provisions to ensure consistency with statutory amendments to the Rehabilitation Act, enactment of the Americans with Disabilities Act and the Americans with Disabilities Amendments Act of 2008, the Affordable Care Act, as well as Supreme Court and other significant court cases. It also further clarifies the obligation to provide services in the most integrated setting.

*b. Strengthening Health and Safety Standards for Consumer Products, Including Those That Disproportionately Impact Underserved Communities*

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

Further, the Department plans to finalize two rules that prohibit menthol as a characterizing flavor in cigarettes and prohibit all characterizing flavors (other than tobacco) in cigars. These and other potential future regulatory actions would significantly reduce disease and death from combusted tobacco product

use, the leading cause of preventable death in the United States.

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

*c. Promoting Equity in Federally Supported Health Care Services*

The Department continues to seek out opportunities to embed equity throughout HHS programs and policies, including in federally supported health care services, and through upcoming rulemaking aimed at identifying appropriate culturally competent and person-centered care requirements for Medicare and Medicaid participating providers. The Department will continue to provide comprehensive, culturally appropriate and quality personal and public health services to American Indian and Alaskan Native people through the Indian Health Service (IHS).

**III. Increasing Public Health Preparedness**

Protecting the nation's public health is a primary responsibility of the Department. This responsibility includes ensuring that the right protections and infrastructure are in place to help the nation to respond to public health threats and outbreaks quickly and effectively. It also includes ensuring healthy and safe food for every American through protections against foodborne illness in the food supply chain. In service of this regulatory priority, over the next year, the Department is pursuing rules that would bolster the nation's resilience to better manage the long-term effects of COVID-19 and future public health threats and improve Americans' access to safe and nutritious food.

*a. Bolstering the Nation's Resilience To Manage COVID-19 and Future Public Health Threats*

In the context of COVID-19 and other disease outbreaks, it is crucial for public health authorities to be able to identify and evaluate persons who may have been exposed to a communicable

disease. Currently, the Centers for Disease Control and Prevention (CDC) is authorized to require airlines to collect certain data regarding passengers and crew arriving from foreign countries for the purposes of health education, treatment, prophylaxis, or other appropriate public health interventions, including contact tracing and travel restrictions. The Department intends to finalize a rulemaking in FY 2024 that allows the Department to continue to receive data in a timely manner and more effectively provide critical public health services in response to COVID-19 and other communicable diseases that may put Americans' health at risk.

HHS will also propose rulemaking that incorporates learnings from the public health emergency into updates to national emergency preparedness requirements for participating Medicare and Medicaid providers, to assure adequate planning for natural and man-made disasters, including climate-related disasters, and coordination with official emergency preparedness systems.

*b. Improving Access to Safe and Nutritious Food*

To help ensure healthy and safe food for every American, the HHS Regulatory Plan includes rules that improve the Department's ability to identify foodborne illnesses, prevent them from reoccurring, and remove unsafe products from the market. For example, the Department intends to finalize a rule intended to improve the safety of produce by requiring farms to conduct comprehensive assessments of pre-harvest agricultural water that would help farms identify and mitigate hazards in water used to grow produce.

The HHS Regulatory Plan also supports the goals of the White House Conference and Strategy on Hunger, Nutrition, and Health, by advancing work to improve consumers' ability to access nutritious food to prevent disease and protect public health. The Department seeks to improve dietary patterns in the United States to help reduce the burden of diet-related chronic diseases. Another way HHS is working towards creating a healthier food supply is by proposing a rule that would permit use of salt substitutes, rather than salt, to help reduce the amount of sodium in standardized foods. Moreover, proposed rulemaking that would standardize food package labeling and finalization of a rule updating the definition of the term "healthy" would help consumers more easily identify nutritious foods and maintain healthy diets.



#### IV. Supporting the Wellbeing of Families and Communities

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

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

##### *a. Strengthening High-Quality Services for Older Adults*

The HHS Regulatory Plan includes rules aimed at enhancing the ability of Administration for Community Living (ACL) programs to protect the rights and wellbeing of older adults. For instance, the Department plans to finalize regulations for Adult Protective Services (APS) programs that will strengthen services for older adults and adults with disabilities that may experience elder abuse.

Furthermore, consistent with the Biden-Harris Administration's Nursing Home Reform Action Plan, the Department's Regulatory Plan includes efforts to improve the safety and quality of care in the nation's nursing homes. For example, the Department plans to finalize rules that institute minimum staffing standards in nursing homes, protect residents, and prevent fraud, waste, and abuse, and mandate transparency of ownership, management, and other information regarding Medicare skilled nursing facilities (SNFs) and Medicaid nursing facilities. These efforts complement the Department's ongoing efforts to also strengthen long term services and supports delivered to older adults and people with disabilities in their homes and communities.

Notably, consistent with the Administration's commitment to maximize transparency and public engagement, and to allow communities greater opportunities to provide input in the regulatory process, HHS sought the expertise of colleagues in the Office of Management and Budget, the General Services Administration, and the Consumer Financial Protection Bureau to inform an alternative approach to public comments for the proposed nursing home minimum staffing rule. The Department ultimately established and disseminated in public materials a direct web link to allow a more accessible comment submission path to the public, lowering the barriers to participation for the nursing home residents, families, and facility staff who will be directly impacted by this regulation.

##### *b. Expanding Opportunities for Children and Youth To Thrive*

The Department's mission to provide effective human services includes a focus on protecting the wellbeing of children and youth. This focus has special significance given the ongoing consequences of the pandemic, which have deeply affected the lives of children and youth—particularly Black, Latino, Indigenous, Native American, and other underserved youth with disproportionate involvement in the child welfare system. Several rules planned for FY 2024 are aimed at enhancing programs and protections for youth and families experiencing foster care, unaccompanied children in the Department's care, and individuals entitled to child support.

As part of its focus on the foster care and the child welfare system, the Department plans to clarify requirements for title IV-E/IV-B agencies to effectively serve LGBTQI+ children and families by ensuring safe and appropriate foster care placements and ensure a process that is responsive to children's concerns. The Department recently issued a final rule allowing licensing standards for relative or kinship foster family homes that are different from non-relative or non-kinship homes. These changes reduce barriers to licensing for relatives and kin who can provide continuity and a safe and loving home for children when they cannot be with their parents. Additionally, the Department recently issued a proposed rule to facilitate the provision of independent legal representation to a child who is a candidate for foster care, or in foster care, and to a parent preparing for participation in foster care legal proceedings. Improving access to

independent legal representation may help prevent the removal of a child from the home or, for a child in foster care, achieve permanence faster.

The Department will also finalize a rule to amend the Child Care and Development Fund (CCDF) regulations with changes that will lower child care costs for families, increase parent's child care options, reduce barriers to receiving child care assistance, increase payments to providers, support higher program quality, and improve child care stability.

Moreover, the Department will propose a rule that aims to improve the quality, stability, and continuity of comprehensive Head Start services for thousands of children and their families by adding provisions to the Head Start Program Performance standards to better support the Head Start workforce.

The Department also plans to finalize a rule to strengthen services and protections for unaccompanied children in its care.

##### *c. Providing Pathways to Economic Success*

In administering the Temporary Assistance for Needy Families (TANF) program, the Department works with States, territories, and tribes to help children and families achieve economic success. The COVID-19 pandemic highlighted the importance of using Federal investments and existing program flexibilities strategically to reduce family poverty and alleviate economic crises, especially for families of color and underserved communities. In the next year, the Department plans to finalize a rule to reform the TANF program to strengthen its role as a safety net and for families and individuals with the lowest incomes. The proposed rule would strengthen TANF's role in supporting family well-being and work, as well as creating additional accountability for States to ensure TANF funds serve their intended purpose, while maintaining State flexibility. These changes are intended to improve the overall wellbeing of families while addressing inequities in program services and policies.

Additionally, the Department is proposing Federal support for employment and training services for non-custodial parents as a supplement to traditional enforcement tools, to make the child support program more effective and help noncustodial parents find and sustain work to be able to support their children.

**HHS—OFFICE FOR CIVIL RIGHTS (OCR)**

## Proposed Rule Stage

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

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

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

*CFR Citation:* 45 CFR 84.

*Legal Deadline:* None.

*Abstract:* This proposed rule would revise regulations under section 504 of the Rehabilitation Act of 1973 to address discrimination on the basis of disability in HHS-funded programs and activities. Covered topics include nondiscrimination in medical treatment; child welfare programs and activities; value assessment methods; accessible medical equipment; accessible web content, mobile apps, and kiosks; and other relevant health and human services activities.

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

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

*Alternatives:* OCR considered issuing guidance, and/or investigating individual complaints and compliance reviews. However, we concluded that not taking regulatory action could result in continued discrimination, inequitable treatment and even untimely deaths of people with disabilities. OCR continues to receive complaints alleging serious

acts of disability discrimination each year. While we continue to engage in enforcement, we believe that our enforcement and recipients' overall compliance with the law will be better supported by the presence of a clearly articulated regulatory framework than continuing the status quo. Continuing to conduct case-by-case investigations without a broader framework risks lack of clarity on the part of providers and violations of section 504 that could have been avoided and may go unaddressed. By issuing a proposed rule, we are undertaking the most efficient and effective means of promoting compliance with section 504.

*Anticipated Cost and Benefits:* The Department anticipates that this rulemaking will result in significant benefits, namely by providing clear guidance to the covered entity community regarding requirements to administer their health programs and activities in a non-discriminatory manner. In turn, the Department anticipates cost savings as individuals with disabilities can access a range of health care services. The Department expects that the rule, when finalized, will generate some changes in action and behavior that may generate some costs. The rule will address a wide range of issues, with varying impacts and a comprehensive analysis is underway. Total anticipated costs are approximately \$1,843.2 million (7% discount) or \$1,782 million (3% discount) and total anticipated benefits are approximately \$1,864.3 million (7% discount) or 1,927.7 million (3% discount). There are additional but necessary costs to make web content and mobile applications accessible and to purchase accessible medical diagnostic equipment (MDE). DOJ has issued/will issue substantially similar rulemaking under Title II of the ADA, those costs are widely understood to be necessary to ensure people with disabilities have equal or comparable access to health and human services.

*Risks:* To be determined.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/14/23	88 FR 63392
NPRM Comment Period End.	11/13/23	
Final Action .....	04/00/24	

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses. *Government Levels Affected:* Local, State.

*Agency Contact:* Molly Burgdorf, Section Chief, Policy Division,

Department of Health and Human Services, Office for Civil Rights, 200 Independence Avenue SW, Washington, DC 20201, *Phone:* 800 368-1019, *TDD Phone:* 800 537-7697, *Email:* 504@hhs.gov.

*RIN:* 0945-AA15

**HHS—OCR****49. • Proposed Modifications to the HIPAA Security Rule To Strengthen the Cybersecurity of Electronic Protected Health Information [0945-AA22]**

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* Health Insurance Portability and Accountability Act of 1996 (HIPAA), sec. 262 (42 U.S.C. 1320d-2); Health Information Technology for Economic and Clinical Health (HITECH) Act, sec. 13401 (42 U.S.C. 17931)

*CFR Citation:* 45 CFR 160; 45 CFR 164.

*Legal Deadline:* None.

*Abstract:* This rule will propose modifications to the Security Standards for the Protection of Electronic Protected Health Information (the Security Rule) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act). These modifications will improve cybersecurity in the health care sector by strengthening requirements for HIPAA regulated entities to safeguard electronic protected health information to prevent, detect, contain, mitigate, and recover from cybersecurity threats.

*Statement of Need:* In February 2003, the HIPAA Security Rule established standards for the security of electronic protected health information (ePHI) to be implemented by HIPAA covered entities and, by amendment of the HITECH Act, their business associates (collectively, "regulated entities"). Prior to the HIPAA Security Rule, standard security measures did not exist in the health care industry to address the security of ePHI while stored and exchanged between entities. Since 2003, the Department has received recommendations from the National Committee on Vital and Health Statistics (NCVHS), an advisory committee to the Secretary of HHS, and the public to update and strengthen security standards to protect ePHI, especially in light of newer threats not previously contemplated in 2003 such as ransomware. Additionally, the

Department has reviewed media reports advocating the strengthening of protections provided by the HIPAA Security Rule as well as a report from a U.S. Senator advocating for modernizing HIPAA to increase protections of ePHI in the face of current cyber threats.

**Summary of Legal Basis:** The current HIPAA Security Rule has not been updated to address the recent dramatic increase in cyber-attacks on the health care sector that are undermining the security of individuals' ePHI. Section 1173(d) of the Social Security Act requires the Secretary of HHS to adopt security standards that take into account the technical capabilities of record systems used to maintain health information, the costs of security measures, the need to train persons who have access to health information, the value of audit trails in computerized record systems, and the needs and capabilities of small health care providers and rural health care providers. Since publication of the HIPAA Security Rule in 2003, there has been an evolution in technical capabilities of record systems used to maintain health information and costs of security measures that support updating the HIPAA Security Rule to help ensure that it can continue to provide a baseline of security standards to meet current and emerging security risks and threats to ePHI.

**Alternatives:** HHS considered whether these policy updates could be implemented through guidance. However, the Department determined that this would be insufficient to prevent and address cybersecurity threats and vulnerabilities facing the U.S. health care system. Revisions to the existing HIPAA Security Rule will help ensure the cybersecurity of individuals' ePHI.

**Anticipated Cost and Benefits:** To be determined.

**Risks:** To be determined.

**Timetable:**

Action	Date	FR Cite
NPRM .....	09/00/24	

**Regulatory Flexibility Analysis Required:** Undetermined.

**Small Entities Affected:** Businesses, Governmental Jurisdictions, Organizations.

**Government Levels Affected:** Undetermined.

**Federalism:** Undetermined.

**International Impacts:** This regulatory action will be likely to have international trade and investment

effects, or otherwise be of international interest.

**Agency Contact:** Marissa Gordon-Nguyen, Senior Advisor for Health Information Privacy, Data, and Cybersecurity Policy, Department of Health and Human Services, Office for Civil Rights, 200 Independence Avenue SW, Washington, DC 20201, *Phone:* 800 368-1019, *TDD Phone:* 800 537-7697, *Email:* ocrprivacy@hhs.gov.  
*RIN:* 0945-AA22

**HHS—OCR**

Final Rule Stage

**50. Confidentiality of Substance Use Disorder Patient Records [0945-AA16]**

**Priority:** Other Significant.

**Legal Authority:** 42 U.S.C. 290dd-2 amended by the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), Pub. L. 116-136, sec. 3221 (March 27, 2020); Health Information Technology for Economic and Clinical Health (HITECH) Act, Pub. L. 111-5, sec. 13402 and 13405 (February 17, 2009); Health Insurance Portability and Accountability Act of 1996 (HIPAA) Pub. L. 104-191, sec. 264 (August 21, 1996); Social Security Act, Pub. L. 74-271 (August 14, 1935) (see secs. 1171 to 1179 of the Social Security Act, 42 U.S.C. 1320d to 1320d-8)

**CFR Citation:** 42 CFR 2; 45 CFR 160; 45 CFR 164.

**Legal Deadline:** NPRM, Statutory, March 27, 2021. The CARES Act requires revisions to regulations with respect to uses and disclosures of information occurring on or after the date that is 12 months after the date of enactment of the Act (March 27, 2021); and not later than one year after the date of enactment, an update to the Notice of Privacy Practices (NPP) provisions of the HIPAA Privacy Rule at 45 CFR 164.520.

**Abstract:** This final rule, to be issued in coordination with the Substance Abuse and Mental Health Services Administration (SAMHSA), would implement provisions of section 3221 of the CARES Act. Section 3221 amended 42 U.S.C. 290dd-2 to better harmonize the 42 CFR part 2 (part 2) confidentiality requirements with certain permissions and requirements of the HIPAA Rules and the HITECH Act.

**Statement of Need:** Rulemaking is needed to implement section 3221 of the CARES Act, which modified the statute that establishes protections for the confidentiality of substance use disorder (SUD) treatment records and authorizes the implementing regulations at 42 CFR part 2 (part 2). As required by

the CARES Act, this regulation will: (1) Align certain provisions of part 2 with aspects of the HIPAA Privacy, Breach Notification, and Enforcement Rules. (2) Strengthen part 2 protections against uses and disclosures of patients' SUD records for civil, criminal, administrative, and legislative proceedings. (3) Require that a HIPAA Notice of Privacy Practices address privacy practices with respect to part 2 records.

**Summary of Legal Basis:** Section 3221(i) of the CARES Act requires rulemaking as may be necessary to implement and enforce section 3221.

**Alternatives:** HHS considered whether the CARES Act provisions could be implemented through guidance. However, rulemaking is required because the current part 2 regulations are inconsistent with the authorizing statute, as amended by the CARES Act. HHS considered whether to include the anti-discrimination provisions of section 3221(g) in this rulemaking. However, because implementation of the anti-discrimination provisions implicates numerous civil rights authorities, which require collaboration with the Department of Justice, HHS will address the anti-discrimination provisions in a separate rulemaking.

**Anticipated Cost and Benefits:** HHS estimates that the effects of the requirements for regulated entities would result in new costs of \$64,299,891 within 12 months of implementing the final rule, followed by \$2,514,756 of recurring annual costs in years two through five. HHS estimates these first-year costs would be partially offset by \$12,755,378 annual cost savings, resulting in overall net costs of \$10,582,027 over 5 years.

**Risks:** To be determined.

**Timetable:**

Action	Date	FR Cite
NPRM .....	12/02/22	87 FR 74216
NPRM Comment Period End.	01/31/23	
Final Action .....	11/00/23	

**Regulatory Flexibility Analysis Required:** No.

**Small Entities Affected:** Businesses, Governmental Jurisdictions, Organizations.

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

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RIN: 0945–AA16

## HHS—OCR

### 51. Nondiscrimination in Health Programs and Activities [0945–AA17]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

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

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

*Legal Deadline:* None.

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

*Alternatives:* The Department has considered the alternative of maintaining the section 1557 implementing regulation in its current form; however, the Department believes it is appropriate to undertake rulemaking given the Administration's commitment to advancing equity and access to health care and in light of the issues raised in litigation challenges to the current rule.

*Anticipated Cost and Benefits:* In enacting section 1557 of the ACA, Congress recognized the benefits of equal access to health services and health insurance that all individuals should have, regardless of their race, color, national origin, sex, age, or disability. The Department anticipates that this rulemaking will result in significant benefits that are difficult to quantify, namely by providing clear guidance to the covered entity community regarding requirements to administer their health programs and activities in a non-discriminatory manner. In turn, the Department anticipates cost savings as individuals are able to access a range of health care services that will result in decreased health disparities among historically marginalized groups and increased health benefits. The Department estimates annualized costs over a 5-year time horizon of about \$551 million or \$560 million; however, it is important to recognize that this rule applies pre-existing nondiscrimination requirements in Federal civil rights laws to various entities, the great majority of which have been covered by these requirements for years.

*Risks:* To be determined.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/04/22	87 FR 47751
NPRM Comment Period End.	10/03/22	
Final Action .....	01/00/24	

*Regulatory Flexibility Analysis Required:* No.

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

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

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

*Agency Contact:* Daniel Shieh, Associate Deputy Director, Policy Division, Department of Health and Human Services, Office for Civil Rights, 200 Independence Avenue SW, Washington, DC 20201, Phone: 800 368–1019, Email: [1557@hhs.gov](mailto:1557@hhs.gov).

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

*RIN:* 0945–AA17

## HHS—OCR

### 52. Safeguarding the Rights of Conscience as Protected by Federal Statutes [0945–AA18]

*Priority:* Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 5 U.S.C. 301

*CFR Citation:* 44 CFR 88.

*Legal Deadline:* None.

*Abstract:* The Department proposed to partially rescind the May 21, 2019, final rule entitled, Protecting Statutory Conscience Rights in Health Care; Delegations of Authority (2019 Final Rule), while leaving in effect the framework created by the February 23, 2011, final rule, entitled, Regulation for the Enforcement of Federal Health Care Provider Conscience Protection Laws. The Department also proposed to retain, with some modifications, certain provisions of the 2019 Final Rule regarding federal conscience protections but eliminate others.

*Statement of Need:* The Biden-Harris Administration takes seriously its obligations to comply with Federal conscience laws and the balance that Congress struck through these statutes. This rule demonstrates the Department's commitment to educating patients, providers, and other covered entities about their rights and obligations under the conscience statutes and to ensure compliance with those authorities.

*Summary of Legal Basis:* The Secretary of the Department of Health & Human Services is statutorily authorized to promulgate regulations to prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. 5 U.S.C. 301. The current Conscience Final Rule (issued in 2019) is in pending litigation.

*Alternatives:* The Department has considered the alternative of maintaining the current regulation in its current form; however, the Department believes it is appropriate to undertake rulemaking in light of the issues raised

in litigation challenges to the current rule.

*Anticipated Cost and Benefits:* The Department estimates that the final rule would generate cost savings of \$725.5 million using a 3-percent discount rate and \$586.4 million using a 7-percent discount rate over the next five years.

*Risks:* To be determined.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/05/23	88 FR 820
NPRM Comment Period End.	03/06/23	
Final Action .....	11/00/23	

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* Organizations.

*Government Levels Affected:* Federal, Local, State

*Agency Contact:* David Christensen, Section Chief, Policy Division, Department of Health and Human Services, Office for Civil Rights, 200 Independence Avenue SW, Washington, DC 20201, *Phone:* 800 368–1019, *Email:* [consciencerule@hhs.gov](mailto:consciencerule@hhs.gov).

*Related RIN:* Related to 0945–AA10

*RIN:* 0945–AA18

**HHS—OCR**

**53. Health and Human Services Grants Regulation [0945–AA19]**

*Priority:* Other Significant.

*Legal Authority:* 5 U.S.C. 301

*CFR Citation:* 45 CFR 75.

*Legal Deadline:* None.

*Abstract:* This final rule will repromulgate certain nondiscrimination provisions of the Uniform Administrative Requirements, 45 CFR part 75, under the Department’s Housekeeping Authority, 5 U.S.C. 301. The rule will clarify the Department’s public policy requirement that no person otherwise eligible will be discriminated against in the administration of HHS grants, consistent with applicable federal statute and applicable Supreme Court precedent. It will also set forth a list of thirteen Federal statutes which prohibit discrimination on the basis of sex to include on the basis of sexual orientation and gender identity, consistent with the Supreme Court’s decision in *Bostock v. Clayton County*.

*Statement of Need:* This rule is needed to provide the Department with uniform regulations governing HHS grants, put the Department in the best position to defend HHS from ongoing litigation risk, and provide certainty to participants in HHS grant programs.

*Summary of Legal Basis:* This rule is promulgated under 5 U.S.C. 301 and the December 26, 2013 OMB requirements, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 79 FR 75867.

*Alternatives:* The Department published a final rule in 2021, 86 FR 2257. That rule was vacated by a federal district court because it had not been promulgated in compliance with the Administrative Procedure Act. Thus, HHS effectively reverts to the prior Final Rule (2016 Grants Rule), 81 FR 89393, which is currently not being enforced due to a 2019 Notice of Nonenforcement, 84 FR 63809. Both the 2016 Grants Rule and the 2019 Notice of Nonenforcement are subject to litigation risk. If OCR did not promulgate this new Grants Rule, HHS could lift the 2019 Notice of Nonenforcement and defend the 2016 Grants Rule. However, we believe that issuing the proposed rule is the most effective way to provide the Department with uniform grants regulations in a manner that avoids costly litigation.

*Anticipated Cost and Benefits:* The Department expects the benefits of regulatory clarity will simplify compliance and ensure fair and nondiscriminatory administration of covered programs under this rule. Costs associated with implementing this administrative change include costs for grantees to become familiar with the rule and for some covered entities to seek an exemption from the rule.

*Risks:* To be determined.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/13/23	88 FR 44750
NPRM Comment Period End.	09/11/23	
Final Action .....	03/00/24	

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

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*Related RIN:* Related to 0991–AC06, Related to 0991–AC16

*RIN:* 0945–AA19

**HHS—OCR**

**54. Proposed Modifications to the HIPAA Privacy Rule To Support Reproductive Health Care Privacy [0945–AA20]**

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* Health Insurance Portability and Accountability Act (PL 104–191); Executive Order 14076, Protecting Access to Reproductive Healthcare Services

*CFR Citation:* 45 CFR 160; 45 CFR 164.

*Legal Deadline:* None.

*Abstract:* This final rule will modify the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act). These modifications will modify existing standards permitting uses and disclosures of protected health information (PHI) by limiting uses and disclosures of PHI for certain purposes.

*Statement of Need:* HIPAA and the HIPAA Rules promote access to health care by establishing standards for the privacy of PHI to protect the confidentiality of individuals’ health information. These protections promote the development and maintenance of confidence and trust between individuals and covered entities, and help to improve the completeness and accuracy of individual medical records. The Privacy Rule, as it has been amended over time, carefully balances the interests of individuals and society in identifiable health information by establishing when and how such information may be used and disclosed, with and without the individual’s permission. The Department has received communications from members of Congress and the public and reviewed media reports indicating concerns and confusion regarding the role of the Privacy Rule in protecting the privacy of individual’s health information, given the evolution of state law in the area of reproductive health care.

*Summary of Legal Basis:* The current HIPAA Privacy Rule has not been updated to reflect the evolution in state law that undermines the privacy of individuals’ protected health information, particularly for use in investigations into or legal proceedings against persons in connection with reproductive health care. The final rule is consistent with Executive Order 14076, which directed the Secretary of

Health and Human Services to consider actions to strengthen the protection of sensitive information related to reproductive healthcare services and bolster patient-provider confidentiality.

**Alternatives:** HHS considered whether these policy changes could be implemented through guidance. However, the Department determined that this would be insufficient to address the concerns that have arisen in the wake of the recent evolution in state law pertaining to reproductive health care that has jeopardize the privacy of individuals' protected health information and affected individuals' relationship with their health care providers and the U.S. health care system. Revisions to the existing HIPAA Privacy Rule are necessary to reestablish that trust and to ensure the privacy of individuals' protected health information.

**Anticipated Cost and Benefits:** HHS estimates that the effects of the requirements for regulated entities would result in new costs of \$611,831,396 within 12 months of implementing the final rule, followed by approximately \$67,831,396 of recurring annual costs in years two through five. The Department anticipates that this rulemaking will result in significant benefits that are difficult to quantify because the area of health care the proposed rule addresses is among the most sensitive for patients and providers if privacy is violated. Additionally, the value of privacy, which cannot be recovered once lost, and trust that privacy will be protected by others, is difficult to quantify fully. The rule would prevent or reduce numerous harms, resulting in non-quantifiable benefits to patient and providers.

**Risks:** To be determined.

**Timetable:**

Action	Date	FR Cite
NPRM .....	04/17/23	88 FR 23506
NPRM Comment Period End.	06/16/23	
Final Action .....	03/00/24	

#### *Regulatory Flexibility Analysis*

**Required:** Undetermined.

**Small Entities Affected:** Businesses, Governmental Jurisdictions, Organizations.

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

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

**Agency Contact:** Marissa Gordon-Nguyen, Senior Advisor for Health Information Privacy, Data, and

Cybersecurity Policy, Department of Health and Human Services, Office for Civil Rights, 200 Independence Avenue SW, Washington, DC 20201, *Phone:* 800 368-1019, *TDD Phone:* 800 537-7697, *Email:* ocrprivacy@hhs.gov, *RIN:* 0945-AA20

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

Proposed Rule Stage

#### **55. Establishment of Disincentives for Health Care Providers Who Have Committed Information Blocking [0955-AA05]**

**Priority:** Substantive, Nonsignificant.  
**Legal Authority:** 42 U.S.C. 300jj-52; 42 U.S.C. 1302; 42 U.S.C. 1306; 42 U.S.C. 1395hh; 42 U.S.C. 1395jjj; 42 U.S.C. 1395rr(1); 5 U.S.C. 552.2

**CFR Citation:** 45 CFR 171; 42 CFR 414; 42 CFR 425; 42 CFR 495.

**Legal Deadline:** None.

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

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

**Summary of Legal Basis:** The provisions would be implemented under the authority of the Public Health Service Act, as amended by the Cures Act.

**Alternatives:** ONC will consider different available authorities under which appropriate disincentives could be established deter information blocking and still minimize regulatory burden for health care providers.

**Anticipated Cost and Benefits:** The costs of this proposed rule would be

minimal. Investigated parties may incur some costs in response to an OIG investigation or the application of a disincentive by an HHS agency, however, this would depend on the frequency of prohibited conduct. The expected benefits of the regulation are deterring information and its negative impacts on many important aspects of health care, including effective health information exchange, patient access, duplicative testing and costs, and the availability and quality of care.

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

**Timetable:**

Action	Date	FR Cite
NPRM .....	11/01/23	88 FR 74947
NPRM Comment Period End.	01/02/24	

#### *Regulatory Flexibility Analysis*

**Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** None.

**Agency Contact:** Alex Baker, Federal Policy Branch Chief, Department of Health and Human Services, Office of the National Coordinator for Health Information Technology, 330 C Street SW, 7th Fl, Washington, DC 20201, *Phone:* 202 690-7151, *Email:* alexander.baker@hhs.gov.

*RIN:* 0955-AA05

### **HHS—CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC)**

Final Rule Stage

#### **56. Control of Communicable Diseases; Foreign Quarantine [0920-AA75]**

**Priority:** Other Significant.

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

**CFR Citation:** 42 CFR 71.

**Legal Deadline:** None.

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

**Statement of Need:** In order to control the introduction, transmission, and

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

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

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

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

which have already been incurred. The costs to the government are minimal, as the vast majority of passenger information that is being collected is transmitted to the government via established data systems that are already in use for other purposes.

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

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

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

*Timetable:*

Action	Date	FR Cite
Interim Final Rule Effective.	02/07/20	85 FR 7874
Interim Final Rule	02/12/20	
Interim Final Rule	03/13/20	
Comment Period End.		
Final Action .....	10/00/24	

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

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

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*RIN:* 0920–AA75

**HHS—FOOD AND DRUG ADMINISTRATION (FDA)**

Proposed Rule Stage

**57. Tobacco Product Standard for Nicotine Level of Certain Tobacco Products [0910–A176]**

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 21 U.S.C. 387g

*CFR Citation:* 21 CFR 1160.

*Legal Deadline:* None.

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

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

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

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



additional tobacco products in the product standard.

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

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

**Risks:** None.

**Timetable:**

Action	Date	FR Cite
NPRM .....	04/00/24	

#### *Regulatory Flexibility Analysis*

**Required:** Yes.

**Small Entities Affected:** Businesses.

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

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

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

RIN: 0910-AI76

#### **HHS—FDA**

##### **58. Front-of-Package Nutrition Labeling [0910-AI80]**

**Priority:** Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

**Unfunded Mandates:** Undetermined.

**Legal Authority:** Not Yet Determined

**CFR Citation:** 21 CFR 101.6 (new).

**Legal Deadline:** None.

**Abstract:** This proposed rule would require the front of food labels to display certain nutrition information to

help consumers, especially those with lower nutrition knowledge, make more informed dietary choices. Front-of-package (FOP) nutrition labeling is intended to complement the Nutrition Facts label on packaged foods by giving consumers additional context to help them quickly and easily identify foods that can help them build a healthy eating pattern. A variety of FOP labeling systems have been adopted in countries world-wide and the experience in these countries suggests that FOP labeling may aid the ability to make healthier choices. FDA plays a key role within a broader, whole-of-government approach to help reduce the burden of chronic diseases and advance health equity by helping to improve dietary patterns in the U.S. This proposed rule is part of FDA's nutrition efforts to empower consumers with nutrition information to help them more easily identify healthier choices and may result in industry innovation to produce healthier foods. FDA will conduct public outreach on this project. FDA has held, and will continue to hold, listening sessions with a wide range of stakeholders, including consumer groups, public health organizations, academia, health care groups, and industry. Additionally, the Reagan-Udall Foundation will host a public meeting in November in collaboration with FDA to hear input from a broad array of stakeholders, and we are launching a series of Tribal Listening Sessions to begin a conversation with federally recognized tribes on, among other things, our FOP initiative.

**Statement of Need:** HHS implemented its first mandatory nutrition labeling 32 years ago. The resulting Nutrition Facts label is iconic and 87% of American consumers report using the label. However, many consumers, particularly those with lower nutrition literacy, may find additional information on food packaging helpful in identifying foods that are part of constructing a healthy diet. This proposed rule, if finalized, could empower consumers with information to help them quickly identify foods that can help them build a healthy eating pattern.

**Summary of Legal Basis:** In general, our legal authority rests on the 1990 Nutrition Labeling and Education Act, which gave the Secretary the authority to require that certain nutrition information be conveyed to allow the public to readily observe and comprehend such information and to understand its relative significance in the context of a total daily diet. (Nutrition Labeling and Education Act of 1990. Public Law 101-535, 104 Stat 2353, Sec. 2(b)(1)(A)). Authority for

certain aspects may also be found in section 403(q), 403(a)(1), and 201(n) of the Federal Food, Drug, and Cosmetic Act (FD&C Act). In addition, section 701(a) of the FD&C Act authorizes the promulgation of regulations for the efficient enforcement of the FD&C Act.

**Alternatives:** FDA will consider different options so that we maximize benefits to consumers.

**Anticipated Cost and Benefits:** The proposed rule, if finalized, is expected to generate compliance costs on affected entities, such as the cost to label packaged foods and the one-time costs to read and understand the rule. Estimated benefits to consumers TBD.

**Risks:** None.

**Timetable:**

Action	Date	FR Cite
NPRM .....	06/00/24	

#### *Regulatory Flexibility Analysis*

**Required:** Yes.

**Small Entities Affected:** Businesses.

**Government Levels Affected:** Undetermined.

**Federalism:** Undetermined.

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

**Agency Contact:** Mark Kantor Nutritionist, Department of Health and Human Services Food and Drug Administration, CPK1 RM 3D034, HFS-830, 5001 Campus Drive, College Park, MD 20740, Phone: 240 402-2082, Email: [mark.kantor@fda.hhs.gov](mailto:mark.kantor@fda.hhs.gov).

RIN: 0910-AI80

#### **HHS—FDA**

##### **59. Medical Devices; Laboratory Developed Tests [0910-AI85]**

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

**Unfunded Mandates:** This action may affect the private sector under Public Law 104-4.

**Legal Authority:** 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 351; 21 U.S.C. 352; 21 U.S.C. 360c; . . .

**CFR Citation:** 21 CFR 809.

**Legal Deadline:** None.

**Abstract:** This rule would amend the Food and Drug Administration's regulations to make explicit that laboratory developed tests (LDTs) are devices under the Federal Food, Drug, and Cosmetic Act (FD&C Act).

**Statement of Need:** In 1976, the Medical Device Amendments of 1976 (the MDA) amended the FD&C Act to create a comprehensive system for the

regulation of devices intended for human use. In implementing the MDA, FDA has generally exercised enforcement discretion such that it generally has not enforced applicable requirements with respect to most LDTs. However, the risks associated with LDTs are much greater today than they were at the time of enactment of the MDA, and today's LDTs are more similar to other in vitro diagnostic products (IVDs) that have not been under FDA's general enforcement discretion approach. This rulemaking would amend FDA's regulations to reflect that the device definition in the FD&C Act does not differentiate between entities manufacturing the device. In conjunction with this amendment, FDA is advancing a policy under which FDA intends to phase out its general enforcement discretion approach for LDTs, so that IVDs manufactured by a laboratory would generally fall under the same enforcement approach as other IVDs. This action is necessary to redress the imbalance in oversight of LDTs and other IVDs and to protect the public health by helping to assure the safety and effectiveness of LDTs.

**Summary of Legal Basis:** FDA is issuing this rule under the Agency's general rulemaking authorities and statutory authorities relating to devices in the FD&C Act, including the definition of a device under section 201(h)(1) of the FD&C Act and FDA's authority to issue regulations for the efficient enforcement of the FD&C Act under section 701(a) of the FD&C Act.

**Alternatives:** The Agency has considered various options to protect the public health by helping to assure the safety and effectiveness of LDTs while avoiding undue disruption to the testing market.

**Anticipated Cost and Benefits:** This rule would result in compliance costs for laboratories that are ensuring their IVDs are compliant with applicable statutory and regulatory requirements. We anticipate that the benefits would include a reduction in healthcare costs associated with unsafe or ineffective tests, including tests promoted with false or misleading claims, and from therapeutic decisions based on the results of those tests.

**Risks:** None.

**Timetable:**

Action	Date	FR Cite
NPRM .....	10/03/23	88 FR 68006
NPRM Comment Period End.	12/04/23	
Final Action .....	04/00/24	

**Regulatory Flexibility Analysis Required:** Yes.  
**Small Entities Affected:** Businesses.  
**Government Levels Affected:** None.  
**Agency Contact:** Eitan Bernstein, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, WO 66, Silver Spring, MD 20993, *Phone:* 240 402-9812, *Email:* eitan.bernstein@fda.hhs.gov.  
**RIN:** 0910-AI85

**HHS—FDA**

Final Rule Stage

**60. Nonprescription Drug Product With an Additional Condition for Nonprescription Use [0910-AH62]**

**Priority:** Other Significant.  
**Legal Authority:** 21 U.S.C. 321; 21 U.S.C. 352; 21 U.S.C. 355; 21 U.S.C. 371; 42 U.S.C. 262; 42 U.S.C. 264; . . .  
**CFR Citation:** 21 CFR 201.67; 21 CFR 314.56; 21 CFR 314.81; 21 CFR 314.125; 21 CFR 314.127.

**Legal Deadline:** None.  
**Abstract:** The final rule is intended to increase options for applicants to develop and market safe and effective nonprescription drug products, which could improve public health by broadening the types of nonprescription drug products available to consumers. The final rule would establish requirements for a drug product that could be marketed as a nonprescription drug product with an additional condition for nonprescription use (ACNU) that an applicant must implement to ensure appropriate self-selection, appropriate actual use, or both by consumers.

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

**Summary of Legal Basis:** FDA's revisions to the regulations regarding labeling and applications for

nonprescription drug products are authorized by the FD&C Act (21 U.S.C. 321 *et seq.*) and by the Public Health Service Act (42 U.S.C. 262 and 264).

**Alternatives:** FDA evaluated various requirements for new drug applications to assess flexibility of nonprescription drug product design through drug labeling for appropriate self-selection and appropriate use.

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

**Risks:** None.

**Timetable:**

Action	Date	FR Cite
NPRM .....	06/28/22	87 FR 38313
NPRM Comment Period End.	10/26/22	
NPRM Comment Period Extended.	10/24/22	87 FR 64178
NPRM Comment Period Extended End.	11/25/22	
Final Rule .....	04/00/24	

**Regulatory Flexibility Analysis Required:** No.  
**Small Entities Affected:** Businesses.  
**Government Levels Affected:** None.  
**Agency Contact:** Angela Mtungwa, Program Coordinator, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Building 51, Room 4393, Silver Spring, MD 20993 *Phone:* 301 796-9329, *Email:* angela.mtungwa@fda.hhs.gov.  
**RIN:** 0910-AH62

**HHS—FDA****61. Nutrient Content Claims, Definition of Term: Healthy [0910–AI13]**

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect the private sector under Public Law 104–4.

*Legal Authority:* 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 343; 21 U.S.C. 371

*CFR Citation:* 10 CFR 101.65 (revision).

*Legal Deadline:* None.

*Abstract:* The rule would update the definition for the implied nutrient content claim “healthy” to be consistent with current nutrition science and federal dietary guidelines. The rule would revise the requirements for when the claim “healthy” can be voluntarily used in the labeling of human food products to indicate that a food, because of its nutrient content, may be useful in achieving a total diet that conforms to current dietary recommendations and helps consumers maintain healthy dietary practices.

*Statement of Need:* This rule would update the “healthy” claim to make it more consistent with advances in nutrition science and public health recommendations, including those captured in recent changes to the Nutrition Facts label. The existing definition of “healthy” is based on nutrition recommendations regarding intake of fat, saturated fat, and cholesterol, and specific nutrients Americans were not getting enough of in the early 1990s. Nutrition recommendations have evolved since that time and now emphasize healthy dietary patterns, which include getting enough of certain foods from food groups such as fruits, vegetables, low-fat dairy, and whole grains. Diet is a contributing factor to chronic diseases, such as heart disease, cancer, and stroke, which are the leading causes of death and disability in the United States. Claims on food packages such as “healthy” can provide quick signals to busy consumers about the healthfulness of a food or beverage.

FDA is updating the existing definition of the “healthy” claim based on the food groups recommended by the Dietary Guidelines for Americans by requiring that food products bearing the claim contain a certain amount of food from such food groups or subgroups. The rule would also require a food product to be limited in saturated fat, sodium, and added sugar. These updates would ensure that foods bearing the claim are ones that are part of a healthy dietary pattern and are recommended by current dietary

guidelines. The rule is also part of FDA’s ongoing effort to empower consumers with information to help them improve their nutrition and dietary patterns and reduce their risk of diet-related chronic disease.

*Summary of Legal Basis:* FDA is issuing this rule under sections 201(n), 301(a), 403(a), 403(r), and 701(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321(n), 331(a), 343(a), 343(r), and 371(a)). These sections authorize the agency to adopt regulations that prohibit labeling that bears claims that characterize the level of a nutrient which is of a type required to be declared in nutrition labeling unless the claim is made in accordance with a regulatory definition established by FDA. Pursuant to this authority, FDA issued a regulation defining the “healthy” implied nutrient content claim, which is codified at 21 CFR 101.65. This rule would update the existing definition to be consistent with current nutrition science and federal dietary guidance.

*Alternatives:*

*Alternative 1:* Codify the alternative criteria in the current enforcement discretion guidance.

In 2016, FDA published “Use of the Term ‘Healthy’ in the Labeling of Human Food Products: Guidance for Industry.” This guidance was intended to advise food manufacturers of FDA’s intent to exercise enforcement discretion relative to foods that use the implied nutrient content claim “healthy” on their labels which: (1) Are not low in total fat, but have a fat profile makeup of predominantly mono and polyunsaturated fats; or (2) contain at least 10 percent of the Daily Value (DV) per reference amount customarily consumed (RACC) of potassium or vitamin D.

One alternative is to codify the alternative criteria in this guidance rather than the proposed update to the definition. Although guidance is non-binding, we assume that most packaged food manufacturers are aware of the guidance and, over the past 2 years, have already made any adjustments to their products or product packaging. Therefore, we assume that this alternative would have no costs to industry and no benefits to consumers.

*Alternative 2:* Extend the compliance date by 1 year.

Extending the anticipated compliance date on the rule updating the definition of healthy by 1 year would reduce costs to industry as they would have more time to change products that may be affected by the rule or potentially coordinate label changes with already scheduled label changes. On the other

hand, an extended compliance date runs the risk of not being helpful to consumers because they may not know whether a packaged food product labeled “healthy” follows the existing definition or the updated one.

*Anticipated Cost and Benefits:* Food products bearing the “healthy” claim currently make up a small percentage (5%) of total packaged foods. Quantified costs to manufacturers include labeling, reformulating, and recordkeeping. Discounted at seven percent over 20 years, the mean present value of costs of the rule is \$237 million, with a lower bound of \$110 million and an upper bound of \$434 million.

Updating the definition of “healthy” to align with current dietary recommendations can provide information to help consumers build more healthful diets to help reduce their risk of diet-related chronic diseases. Discounted at seven percent over 20 years, the mean present value of benefits of the rule is \$290 million, with a lower bound estimate of \$9 million and an upper bound estimate of \$857 million.

*Risks:* None.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/29/22	87 FR 59168
NPRM Comment Period End.	12/28/22	
NPRM Comment Period Extended.	11/29/22	87 FR 73267
NPRM Comment Period Extended End.	02/16/23	
Final Action .....	04/00/24	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Undetermined.

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*RIN:* 0910–AI13

**HHS—FDA****62. Tobacco Product Standard for Characterizing Flavors in Cigars [0910–AI28]**

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

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

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

*CFR Citation:* 21 CFR 1166.

*Legal Deadline:* None.

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

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

*Summary of Legal Basis:* Section 907 of the FD&C Act authorizes the adoption of tobacco product standards if the Secretary finds that a tobacco product standard is appropriate for the protection of public health. Section 907 also authorizes FDA to include in a product standard a provision that restricts the sale and distribution of a tobacco product to the extent that it may be restricted by a regulation under

section 906(d) of the FD&C Act. Section 906(d) of the FD&C Act authorizes the Secretary to issue regulations requiring restrictions on the sale and distribution of a tobacco product, including restrictions on the access to, and the advertising and promotion of, the tobacco product, if the Secretary determines that such regulation would be appropriate for the protection of the public health. Section 701(a) of the FD&C Act authorizes the promulgation of regulations for the efficient enforcement of the FD&C Act.

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

*Anticipated Cost and Benefits:* The anticipated benefits of the product standard include those coming from reduced death and disease that are the result of cigar use among adult cigar smokers, reduced death and disease from secondhand smoke, and reduced death and disease among youth who are deterred from initiating under the product standard. The anticipated costs of the product standard are those to firms to comply with the rule, to consumers impacted by the rule, and to the government.

*Risks:* None.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	03/21/18	83 FR 12294
ANPRM Comment Period End.	07/19/18	
NPRM .....	05/04/22	87 FR 26396
NPRM Comment Period Extended.	06/21/22	87 FR 36786
NPRM Comment Period End.	07/05/22	
NPRM Comment Period Extended.	08/02/22	
Final Rule .....	03/00/24	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Small Entities Affected:* Businesses.

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

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

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

*RIN:* 0910–AI28

**HHS—FDA**

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

*Priority:* Other Significant.

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

*CFR Citation:* 21 CFR 112.

*Legal Deadline:* None.

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

*Statement of Need:* Agricultural water can be a major conduit of pathogens that can contaminate produce. Recent produce outbreaks potentially linked to agricultural water have emphasized the importance of ensuring that FDA’s agricultural water standards are workable across the diversity of domestic and foreign farms and account for the variety of factors that impact water sources and uses. FDA plans to amend its produce safety regulation to address concerns about the practical challenges of implementing certain agricultural water requirements for covered produce other than sprouts, while protecting the public health.

*Summary of Legal Basis:* FDA’s authority for issuing this rule is provided by sections 402, 419, and 701(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 342, 350h, and 371(a)) and sections 311, 361, and 368 of the Public Health Service Act (PHS Act) (42 U.S.C. 243, 264, and 271).

Specifically, this rulemaking will amend certain agricultural water requirements in the produce safety regulation, codified at 21 CFR part 112, and issued under the following authorities: Section 419(c)(1)(A) of the FD&C Act (21 U.S.C. 350h(c)(1)(A)) authorizes FDA to establish science-based minimum standards for the safe production and harvesting of those types of fruits and vegetables that are raw agricultural commodities for which such standards minimize the risk of serious adverse health consequences or death. Section 419(c)(1)(B) of the FD&C Act (21 U.S.C. 350h(c)(1)(B)) further

requires that these minimum standards provide sufficient flexibility to be practicable for all sizes and types of businesses. Section 402(a)(3) of the FD&C Act (21 U.S.C. 342(a)(3)) provides that a food is adulterated if it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food. Section 402(a)(4) of the FD&C Act (21 U.S.C. 342(a)(4)) provides that a food is adulterated if it has been prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health. Additionally, section 701(a) of the FD&C Act (21 U.S.C. 371(a)) grants the authority to promulgate regulations for the efficient enforcement of the FD&C Act. Sections 311, 361, and 368 of the PHS Act (21 U.S.C. 243, 264, and 271), provide authority for FDA to issue regulations to prevent the spread of communicable diseases from one State to another.

*Alternatives:* None.

*Anticipated Cost and Benefits:* FDA anticipates costs associated with complying with the water risk assessment provisions for non-sprout covered produce.

This final rule will generate unquantified benefits stemming from increasing flexibility and addressing practical implementation challenges associated with certain agricultural water provisions for covered produce other than sprouts in the produce safety regulation and quantified benefits resulting from fewer illnesses caused by pre-harvest agricultural water.

*Risks:* In a 2019 Report, the Interagency Food Safety Analytics Collaboration (IFSAC) estimated that produce commodities cause 65 percent of foodborne E. coli O157 illnesses and over 40 percent of foodborne Salmonella illnesses. Agricultural water can be a major conduit for produce contamination. This rule is intended to address the practical implementation challenges of certain agricultural water requirements for covered produce other than sprouts, while protecting public health by setting forth standards to minimize the risk of serious adverse health consequences or death, including those reasonably necessary to prevent the introduction of known or reasonably foreseeable biological hazards into or onto produce, and provide reasonable assurances that the produce is not adulterated on account of those hazards.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/06/21	86 FR 69120

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 .....	02/00/24	

#### *Regulatory Flexibility Analysis*

*Required:* Undetermined.

*Government Levels Affected:* Undetermined.

*Agency Contact:* Samir Assar, Supervisory Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, Center for Food Safety and Applied Nutrition, Office of Food Safety, 5001 Campus Drive, College Park, MD 20740, *Phone:* 240 402-1636, *Email:* samir.assar@fda.hhs.gov.

*RIN:* 0910-AI49

#### **HHS—FDA**

##### **64. Tobacco Product Standard for Menthol in Cigarettes [0910-AI60]**

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

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

*Legal Authority:* 21 U.S.C. 387g; 21 U.S.C. 371; 21 U.S.C. 387f

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* None.

*Abstract:* This rule is a tobacco product standard to prohibit the use of menthol as a characterizing flavor in cigarettes.

*Statement of Need:* The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act), authorizes FDA to adopt tobacco product standards under section 907 if the Secretary finds that a tobacco product standard is appropriate for the protection of the public health. This product standard would prohibit menthol as a characterizing flavor in cigarettes. The standard would reduce the appeal of cigarettes, particularly to youth and young adults, and thereby decrease the likelihood that nonusers who would otherwise experiment with menthol cigarettes would progress to regular cigarette smoking. In addition, the tobacco product standard would improve the health and reduce the mortality risk of current menthol cigarette smokers by decreasing cigarette consumption and increasing the likelihood of cessation.

*Summary of Legal Basis:* Section 907 of the FD&C Act authorizes the adoption of tobacco product standards if the Secretary finds that a tobacco product standard is appropriate for the protection of public health.

*Alternatives:* In addition to the costs and benefits of the rule, FDA will assess the costs and benefits of extending the effective date of the rule, creating a process by which some products may apply for an exemption or variance from the product standard, and prohibiting menthol as an intentional additive in cigarette products rather than prohibiting menthol as a characterizing flavor.

*Anticipated Cost and Benefits:* The rule is expected to generate compliance costs on affected entities, such as one-time costs to read and understand the rule and alter manufacturing/importing practices. The quantified benefits of the rule stem from improved health and diminished exposure to tobacco smoke for users of cigarettes from decreased experimentation, progression to regular use, and consumption of menthol cigarettes. The qualitative benefits of the rule include impacts such as reduced illness for smokers and non-smokers.

*Risks:* None.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	07/24/13	78 FR 44484
ANPRM Comment Period End.	09/23/13	
NPRM .....	05/04/22	87 FR 26454
NPRM Comment Period Extended.	06/21/22	87 FR 36786
NPRM Comment Period End.	07/05/22	
NPRM Comment Period Extended End.	08/02/22	
Final Rule .....	03/00/24	

#### *Regulatory Flexibility Analysis*

*Required:* Yes.

*Small Entities Affected:* Businesses.

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

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

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

*RIN:* 0910-AI60

## HHS—HEALTH RESOURCES AND SERVICES ADMINISTRATION (HRSA)

### Proposed Rule Stage

#### 65. Countermeasures Injury Compensation Program: COVID–19 Countermeasures Injury Table [0906–AB31]

*Priority:* Other Significant.

*Legal Authority:* 42 U.S.C. 247d–6e

*CFR Citation:* 42 CFR 110.

*Legal Deadline:* None.

*Abstract:* This proposed rule would establish the COVID–19 Countermeasures Injury Table for the Countermeasures Injury Compensation Program (CICP). The Public Readiness and Emergency Preparedness Act (PREP Act) authorized the Secretary of HHS to establish the CICP to provide benefits to certain persons who sustain serious physical injury or death as a direct result of the administration or use of covered countermeasures identified by the Secretary in declarations issued under the PREP Act. In addition, the Secretary may provide death benefits to certain survivors of individuals who died as a direct result of covered injuries or their health complications. One way that an individual who was administered or used a covered countermeasure can show that they sustained a covered injury is by demonstrating that they sustained an injury listed on a Countermeasures Injury Table (Table) within the time interval set forth on the Table. The Table will list and explain injuries that, based on compelling, reliable, valid, medical, and scientific evidence, are presumed to be caused by covered COVID–19 countermeasures, and set forth the time periods in which the onset of these injuries must occur after the administration or use of these covered COVID–19 countermeasures.

*Statement of Need:* The PREP Act directs the Secretary to establish, through regulations, a Table identifying serious physical injuries that are presumed to be directly caused by the administration or use of a covered countermeasure. The Secretary may only identify such injuries if it is determined based on compelling, reliable, valid, medical and scientific evidence “that the administration or use of the covered countermeasure directly causes such covered injuries. A Table creates a rebuttable presumption of causation, for compensation purposes, for eligible individuals whose injuries are listed on and meet the requirements of the Table.

*Summary of Legal Basis:* Section 319F–4 of the Public Health Service Act, as amended, directs the Secretary,

following issuance of a declaration under Section 319F–3(b), to establish procedures for the CICP to provide medical and lost employment benefits to certain individuals who sustained a covered injury as the direct result of the administration or use of a covered countermeasure consistent with a declaration issued pursuant to section 319F–3(b), or in good faith belief that administration or use of the covered countermeasure was consistent with a declaration. The CICP’s regulations are set forth in 42 CFR part 110. 42 CFR 110.20(a) states that individuals must establish that a covered injury occurred to be eligible for benefits under the Program. A covered injury is death or a serious injury determined by the Secretary to be: (1) An injury meeting the requirements of a Table, which is presumed to be the direct result of the administration or use of a covered countermeasure unless the Secretary determines there is another more likely cause; or (2) an injury (or its health complications) that is the direct result of the administration or use of a covered countermeasure. Through this NPRM, the Secretary proposes to add the COVID–19 Countermeasures Injury Table to subpart K of 42 CFR part 110, which lists Injury Tables for covered countermeasures, by adding sections (e) and (f).

*Alternatives:* An alternative is to continue to review each claim and the associated medical records individually to ensure the requester has demonstrated that the injury occurred as the direct result of the administration or use of a covered countermeasure. This approach would be more time- and resource-intensive than providing an evidence-based presumption of causation by publishing a COVID–19 Countermeasures Injury Table for the CICP.

*Anticipated Cost and Benefits:* This NPRM will allow requesters who were administered or used a covered COVID–19 countermeasure and whose alleged injuries are listed on the Table, but who missed the one-year filing deadline, to be able to file their claim within one year from the publication of the Table. Also, future requesters, and previous requesters who were denied compensation, will be able to benefit from the presumption of causation afforded by their injuries being included on the Table, rather than needing to prove causation on a case-by-case basis. This will likely increase the number of claims filed and compensated. However, in rare instances that a COVID–19 countermeasure injury has occurred, this will decrease the burden on requesters allowing them to more easily

receive compensation that may include reasonable unreimbursed medical expenses, lost employment income, and survivor death benefit.

*Risks:* None.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/23	

#### *Regulatory Flexibility Analysis*

*Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Agency Contact:* CDR George Grimes, Director, Division of Injury Compensation Programs, Department of Health and Human Services, Health Resources and Services Administration, 5600 Fishers Lane, Room 08N146B, Rockville, MD 20857, *Phone:* 855 266–2427, *Email:* [cicp@hrsa.gov](mailto:cicp@hrsa.gov).

*RIN:* 0906–AB31

## HHS—HRSA

### Final Rule Stage

#### 66. 340B Drug Pricing Program; Administrative Dispute Resolution [0906–AB28]

*Priority:* Other Significant.

*Legal Authority:* Not Yet Determined

*CFR Citation:* 42 CFR 10.

*Legal Deadline:* None.

*Abstract:* This final rule will revise the Administrative Dispute Resolution (ADR) final rule currently in effect and apply to all drug manufacturers and covered entities that participate in the 340B Drug Pricing Program (340B Program). It will establish new requirements and procedures for the 340B Program’s ADR process. This administrative process will allow covered entities and manufacturers to file claims for specific compliance areas outlined in the statute after good faith efforts have been exhausted by the parties.

*Statement of Need:* This final rule will revise the December 2020 340B Administrative Dispute Resolution (ADR) final rule, which became effective January 13, 2021. The final rule will implement new requirements and procedures for the 340B Program’s ADR process. The final rule applies to drug manufacturers and covered entities participating in the 340B Drug Pricing Program (340B Program) by allowing these entities to file claims for specific compliance areas outlined in the 340B statute after good faith efforts have been exhausted by the parties. It aligns with the President’s priorities on drug pricing, better reflects the current state

of the 340B Program, and seeks to correct procedural deficiencies in the current 340B ADR process.

**Summary of Legal Basis:** Section 340B(d)(3) of the Public Health Service Act (PHS Act) requires the Secretary to promulgate regulations establishing and implementing an ADR process for certain disputes arising under the 340B Program. Under the 340B statute, the purpose of the ADR process is to resolve (1) claims by covered entities that they have been overcharged for covered outpatient drugs by manufacturers and (2) claims by manufacturers, after a manufacturer has conducted an audit as authorized by section 340B(a)(5)(C) of the PHS Act, that a covered entity has violated the prohibition on diversion or duplicate discounts.

**Alternatives:** The 2020 340B ADR final rule would remain in effect. This final rule is designed to be more accessible to stakeholders and will use fewer stakeholder and government resources to resolve disputes as opposed to the 2020 340B ADR final rule.

**Anticipated Cost and Benefits:** The ADR process will not have a significant financial impact on stakeholders nor result in significant costs. The final rule will enable stakeholders to resolve disputes in a fair, efficient, and expeditious manner in accordance with section 340B(d)(3) of the Public Health Service Act.

**Risks:** None.

**Timetable:**

Action	Date	FR Cite
NPRM .....	11/30/22	87 FR 73516
NPRM Comment Period End.	01/30/23	
Final Action .....	12/00/23	

**Regulatory Flexibility Analysis Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** None.

**Agency Contact:** Michelle Herzog, Deputy Director, Office of Pharmacy Affairs, Department of Health and Human Services, Health Resources and Services Administration, 5600 Fishers Lane, 08W12, Rockville, MD 20857, Phone: 301 443-4353, Email: mherzog@hrsa.gov.

**RIN:** 0906-AB28

## HHS—CENTERS FOR MEDICARE & MEDICAID SERVICES (CMS)

Proposed Rule Stage

### 67. Healthcare System Resiliency and Modernization (CMS-3426) [0938-AU91]

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

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

**Legal Authority:** 42 U.S.C. 1395hh; 42 U.S.C. 1302; 42 U.S.C. 1821; 42 U.S.C. 1832(a)(2)(F)(I); 42 U.S.C. 1861(dd)(1); 42 U.S.C. 1905(a)

**CFR Citation:** 42 CFR 403; 42 CFR 416; 42 CFR 418; 42 CFR 441; . . .

**Legal Deadline:** None.

**Abstract:** This rule proposes revisions to the regulations for all Medicare- and Medicaid-participating providers and suppliers to ensure continuous, ongoing access to safe and effective health care services.

**Statement of Need:** This proposed rule would revise and update national emergency preparedness requirements for Medicare- and Medicaid-participating providers and suppliers to plan adequately for both natural and man-made disasters, including climate-related disasters, and coordinate with federal, state, tribal, regional, and local emergency preparedness systems based on lessons learned during the COVID-19 public health emergency and other recent events. This rule also proposes revisions that support health care system resiliency. The need for this rule is based on feedback and public consultations with healthcare providers, public health organizations and professionals, and researchers, including multiple listening sessions. Participants described how some organizations were unprepared for extended, wide- spread, and concurrent emergencies. They expressed that improvements to CMS requirements would support better care and outcomes for patients during and after emergencies. In addition, this rule would advance equity, increase access to culturally and linguistically appropriate services, and address and improve outcomes and disparities in maternal health care. Lastly, this rule would also advance equity and reduce disparities across the continuum of care for patients by improving transparency, patient education, and health literacy on the organ donation and transplantation process. The proposals are in accordance with Executive Orders 13985, 13988, 13995, and 14301 on Advancing Racial Equity and Support for Underserved Communities through

the Federal Government, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, Ensuring an Equitable Pandemic Response and Recovery, and on Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders, respectively.

**Summary of Legal Basis:** There are various sections of the Social Security Act (the Act) that define the types of providers and suppliers that may participate in Medicare and Medicaid and list the requirements that each provider and supplier must meet to be eligible for Medicare and Medicaid participation. The Act also authorizes the Secretary to establish other requirements as necessary to protect the health and safety of patients, although the wording of such authority differs slightly between provider and supplier types. Such requirements may include the CoPs for providers, CfCs for suppliers, and requirements for long term care facilities. The CoPs and CfCs are intended to protect public health and safety and promote high quality care for all persons. The Public Health Service (PHS) Act sets forth additional regulatory requirements that certain Medicare providers and suppliers are required to meet in order to participate. The statutory authority to revise the health and safety standards for Medicare and Medicaid participating providers and suppliers is contained within Section 1102 (42 U.S.C. 1302) of the Social Security Act. In addition, this rule revises the health and safety regulations to advance health equity and reduce disparities for all individuals in accordance with Executive Orders 13985, 13988, 13995, and 14301 on Advancing Racial Equity and Support for Underserved Communities through the Federal Government, Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, Ensuring an Equitable Pandemic Response and Recovery, and on Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders, respectively.

**Alternatives:** In developing the policies contained in this rule, we considered numerous alternatives, including maintaining existing requirements. These alternatives will be described in the rule.

**Anticipated Cost and Benefits:** The provisions in this rule aim to improve emergency preparedness, increase system resiliency, advance health equity, improve maternal health care, increase access to care, improve quality of care, and reduce health disparities for



all individuals. This regulation will ultimately remove barriers and ensure continuous access to health care and improve quality of care for all. As we move toward publication, estimates of the cost and benefits of these provisions will be included in the rule.

**Risks:** This action furthers the goals of the Executive Orders on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (E.O. 13985), Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation (E.O. 13988), Executive Order on Ensuring an Equitable Pandemic Response and Recovery (E.O. 13995), and Executive Order on Advancing Equity, Justice, and Opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders (E.O. 14301). While there may be some risks associated with an increased burden on providers as a result of these regulations, we believe benefits related to culturally and linguistically appropriate services and improved maternal health care would far outweigh any risks.

**Timetable:**

Action	Date	FR Cite
NPRM .....	12/00/23	

**Regulatory Flexibility Analysis Required:** Undetermined.

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

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

**Agency Contact:** Lauren Oviatt, Acting Director, Division of Non-Institutional Standards and Quality, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality, MS: C2-21-16, 7500 Security Boulevard, Baltimore, MD 21244-1850, *Phone:* 410 786-4683, *Email:* lauren.oviatt@cms.hhs.gov

**Related RIN:** Merged with 0938-AV21  
**RIN:** 0938-AU91

## HHS—CMS

### 68. Appeal Rights for Certain Changes in Patient Status (CMS-4204) [0938-AV16]

**Priority:** Other Significant.

**Legal Authority:** 42 U.S.C. 1395ff

**CFR Citation:** 42 CFR 405; 42 CFR 476; 42 CFR 489.

**Legal Deadline:** None.

**Abstract:** Pursuant to a court order, this proposed rule would establish new

appeals processes for Medicare beneficiaries who have an inpatient hospital admission changed to outpatient by a hospital, and meet other conditions set forth in the order.

**Statement of Need:** This proposed rule sets forth new appeals processes to implement a court order. In this order, the Department of Health and Human Services (HHS) is directed to establish appeal process for certain beneficiaries in Original Medicare who are initially admitted to a hospital as an inpatient by a physician but whose status during their stay is changed to outpatient receiving observation services by the hospital, thereby effectively denying Part A coverage for their hospital stay.

**Summary of Legal Basis:** This rule sets forth new appeals procedures to implement the court order in *Alexander v. Azar*, 613 F. Supp. 3d 559 (D. Conn. 2020)), *aff'd sub nom., Barrows v. Becerra*, 24 F.4th 116 (2d Cir. 2022). The authority for these changes is under various sections of the Social Security Act (the Act).

**Alternatives:** None. This rule implements a court order.

**Anticipated Cost and Benefits:** This rule is not considered a significant rule.

**Risks:** No risks are anticipated.

**Timetable:**

Action	Date	FR Cite
NPRM .....	12/00/23	

**Regulatory Flexibility Analysis Required:** No.

**Government Levels Affected:** Federal.

**Agency Contact:** David Danek, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: 2325, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786-8249, *Email:* david.danek@cms.hhs.gov.

**RIN:** 0938-AV16

## HHS—CMS

### 69. Contract Year 2025 Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, and Medicare Cost Plan Programs, and Pace (CMS-4205) [0938-AV24]

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

**Legal Authority:** Pub. L. 115-271

**CFR Citation:** 42 CFR 422; 42 CFR 423; 42 CFR 460.

**Legal Deadline:** None.

**Abstract:** This proposed rule would make changes to strengthen and improve the Medicare Advantage (Part

C) and prescription drug benefit (Part D) programs, and Programs of All-Inclusive Care for the Elderly (PACE), and implement any legislative changes that are required by January 1, 2025.

**Statement of Need:** This proposed rule is necessary to amend the regulations for the Medicare Advantage (Part C) program, Medicare Prescription Drug Benefit (Part D) program, Medicare cost plan program, and Program of All-Inclusive Care for the Elderly (PACE) to implement certain statutory requirements, to codify existing subregulatory guidance, and based on our continued experience in the administration of the programs.

**Summary of Legal Basis:** This rule addresses multiple sections of the Social Security Act and proposes to codify existing Part C and Part D subregulatory guidance. It would also implement certain sections of the Bipartisan Budget Act of 2018 and the Consolidated Appropriations Act (CAA), 2023.

**Alternatives:** This rule would implement provisions that require public notice and comment and are necessary for the upcoming contract year. We will continue to explore additional alternatives as we develop the rule.

**Anticipated Cost and Benefits:** Preliminary estimates of the anticipated costs and benefits of this proposed rule indicate minor costs (under \$50 million) associated with increased paperwork as well as some savings to the Medicare Trust Fund. Numerical estimates are pending and as we move toward publication, estimates of costs and benefits will be included in the proposed rule.

**Risks:** Risks associated with the impact of this rule are under development and will be included in the published rule.

**Timetable:**

Action	Date	FR Cite
NPRM .....	11/15/23	88 FR 78476
NPRM Comment Period End.	01/05/24	

**Regulatory Flexibility Analysis Required:** Undetermined.

**Government Levels Affected:** None.

**Agency Contact:** Heather Barkes, Director, Division of Policy, Analysis, and Planning, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4-21-26, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786-8615, *Email:* heather.barkes@cms.hhs.gov.

**RIN:** 0938-AV24

**HHS—CMS****70. Minimum Staffing Standards for Long-Term Care Facilities and Medicaid Institutional Payment Transparency Reporting (CMS-3442) [0938-AV25]**

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect the private sector under Public Law 104–4.

*Legal Authority:* 42 U.S.C. 181; 42 U.S.C. 1919; 42 U.S.C. 1902

*CFR Citation:* 42 CFR 483; 42 CFR 442; 42 CFR 438.

*Legal Deadline:* Final, Statutory, September 6, 2026, MMA sec. 902 requires Medicare final rules publish within 3 years of a proposed or interim final rule.

Per the CMS notice published December 30, 2004 (69 FR 78442), except for certain Medicare payment regulations and certain other statutorily-mandated regulations, we schedule all Medicare final regulations for publication within the 3-year standardized time limit in the current Unified Agenda. We do not intend to delay publishing a Medicare final regulation for 3 years if we are able to publish it sooner.

*Abstract:* This rule establishes minimum staffing standards for long-term care facilities, as part of the Biden-Harris Administration's Nursing Home Reform initiative to ensure safe and quality care in long term care facilities. In addition, this rule requires States to report the percent of Medicaid payments for certain Medicaid-covered institutional services that are spent on compensation for direct care workers and support staff. Consistent with the Administration's commitment to maximize transparency and public engagement, and to allow communities greater opportunities to provide input in the regulatory process, HHS sought the expertise of colleagues in the Office of Management and Budget, the General Services Administration, and the Consumer Financial Protection Bureau to inform an alternative approach to public comments for the proposed nursing home minimum staffing rule. The Department ultimately established and disseminated in public materials a direct web link to allow a more accessible comment submission path to the public, lowering the barriers to participation for the nursing home residents, families, and facility staff who will be directly impacted by this regulation.

*Statement of Need:* Ensuring that beneficiaries receive safe, reliable, and quality nursing home care is a critical

function of the Medicare and Medicaid programs and a top priority of CMS. The COVID–19 Public Health Emergency (PHE) tragically caused unprecedented illness and death among nursing home residents and workers. The PHE also exacerbated staffing challenges experienced in many facilities and further highlighted disparities in care and outcomes. Despite existing requirements that facilities provide sufficient levels of staffing in LTC facilities, chronic understaffing remains a significant concern. This rule establishes minimum staffing standards for long-term care facilities, as part of the Biden-Harris Administration's Nursing Home Reform initiative to ensure safe and quality care in long-term care facilities. In addition, this rule requires States to report the percent of Medicaid payments for certain Medicaid-covered institutional services that are spent on compensation for direct care workers and support staff.

*Summary of Legal Basis:* Sections 1819 and 1919 of the Act authorize the Secretary to issue requirements for participation in Medicare and Medicaid, including such regulations as may be necessary to protect the health and safety of residents (sections 1819(d)(4)(B) and 1919(d)(4)(B) of the Act).

*Alternatives:* In developing the policies contained in this rule, we considered numerous alternatives. The proposed rule solicited comments on alternative policy options that should be considered for establishing minimum nurse staffing standards that would maintain acceptable quality and safety within LTC facilities.

*Anticipated Cost and Benefits:* The proposed rule included an estimated cost of \$40.6 billion over 10 years for the 24/7 RN and the 0.55 RN and 2.45 NA hours per resident day (HPRD) requirements and \$147 million for the Medicaid institutional payment transparency reporting requirement. Quantified benefits include an estimated Medicare savings of \$2.5 billion over 10 years due to fewer hospitalizations and emergency department visits, as well as increased resident discharges to home or the community.

*Risks:* This action establishes minimum staffing standards that nursing homes must meet in order to ensure that residents receive safe and quality care in LTC facilities. The minimum staffing standards also provide staff in LTC facilities with the support they need to safely care for residents and reduce staff turnover and burnout, which can lead to improved safety and quality for residents and staff.

In addition, the rule promotes public transparency related to the percent of Medicaid payments for certain institutional services that are spent on compensation to direct care workers and support staff. While there may be additional costs to implement these requirements, the proposals strike an appropriate balance between cost and benefit and are necessary at this time to protect resident health and safety and ensure their needs are met.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/06/23	88 FR 61352
NPRM Comment Period End.	11/06/23	
Final Action .....	09/00/26	

*Regulatory Flexibility Analysis*

*Required:* No.

*Government Levels Affected:* State.

*Agency Contact:* Ronisha Blackstone, Director, Division of Institutional Quality Standards, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality, MS: S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–6882, *Email:* ronisha.blackstone@cms.hhs.gov.

*RIN:* 0938–AV25

**HHS—CMS****Final Rule Stage****71. Streamlining the Medicaid, Chip, and BHP Application, Eligibility Determination, Enrollment, and Renewal Processes (CMS-2421) [0938-AU00]**

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 42 U.S.C. 1302

*CFR Citation:* 42 CFR 431; 42 CFR 435; 42 CFR 457; 42 CFR 600; . . .

*Legal Deadline:* None.

*Abstract:* This rule implements changes to simplify the processes for eligible individuals to enroll and retain eligibility in Medicaid, the Children's Health Insurance Program (CHIP), and the Basic Health Program (BHP). The changes will be finalized in two rules. The first final rule removes barriers and facilitates enrollment of new applicants, particularly those dually eligible for Medicare and Medicaid. The second final rule will follow in CY 2024 and implement changes to align enrollment and renewal requirements for most individuals in Medicaid; establish beneficiary protections related to returned mail; create timeliness

requirements for redeterminations of eligibility in Medicaid and CHIP; make transitions between programs easier; eliminate access barriers for children enrolled in CHIP by prohibiting premium lock-out periods, waiting periods, and benefit limitations; and modernize recordkeeping requirements to ensure proper documentation of eligibility and enrollment.

*Statement of Need:* Since the implementation of the Affordable Care Act (ACA), CMS has made improvements in streamlining the Medicaid and CHIP application, eligibility determination, enrollment, and renewal processes. Simplifying enrollment in Medicaid and CHIP coverage is a foundational step in efforts to address health disparities for low-income individuals. However, gaps remain in States' ability to seamlessly process beneficiaries' eligibility and enrollment in order to maximize coverage. This rule will provide States with the tools they need to reduce unnecessary barriers to enrollment in Medicaid and CHIP and to keep eligible beneficiaries covered. CMS engaged in a series of discussions with state Medicaid and CHIP agencies during development of the proposed rule, to examine enrollment barriers and discuss potential options for relief.

*Summary of Legal Basis:* This rule responds to the January 28, 2021, Executive Order on Strengthening Medicaid and the Affordable Care Act. It addresses components of title XIX and title XXI of the Social Security Act and several sections of the Patient Protection and Affordable Care Act (Pub. L. 111–148) and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act.

*Alternatives:* In developing the policies contained in this rule, we considered numerous alternatives, including maintaining existing requirements. These alternatives are described in the rule.

*Anticipated Cost and Benefits:* The provisions in this rule will streamline Medicaid and CHIP enrollment processes and ensure that eligible beneficiaries can maintain coverage. While states and the Federal Government will incur initial costs to implement these changes, this rule aims to reduce administrative barriers to enrollment, which is expected to reduce administrative costs over time. The provisions in this rule are designed to increase access to affordable health coverage, and we believe that the benefits will justify the costs. Additionally, through clear and

consistent requirements for the timely renewal of eligibility for all beneficiaries, this rule promotes program integrity, thereby protecting taxpayer funds at both the state and federal levels. As we move toward publication, estimates of the cost and benefits of these provisions will be included in the rule.

*Risks:* We anticipate that the provisions of this rule will further the administration's goal of strengthening Medicaid and making high-quality health care accessible and affordable for every American. At the same time, through clear and consistent requirements for conducting regular renewals of eligibility, acting on changes reported by beneficiaries and maintaining thorough recordkeeping on these activities, this rule will reduce the risk of improper payments.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/07/22	87 FR 54760
NPRM Comment Period End.	11/07/22	
1st Final Action ...	09/21/23	88 FR 65230
1st Final Action Effective.	11/17/23	
2nd Final Action ..	02/00/24	

*Regulatory Flexibility Analysis Required:* No.

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

*Agency Contact:* Sarah Delone, Deputy Director, Children and Adults Health Programs Group, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid and CHIP Services, MS: S2–01–16, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–5647, *Email:* sarah.delone2@cms.hhs.gov.

*RIN:* 0938–AU00

**HHS—CMS**

**72. Short-Term, Limited-Duration Insurance; Independent, Noncoordinated Excepted Benefits Coverage; Level-Funded Plan Arrangements; and Tax Treatment of Certain Accident and Health Insurance (CMS–9904) [0938–AU67]**

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* Pub. L. 111–148, title I

*CFR Citation:* 45 CFR 144; 45 CFR 146; 45 CFR 148.

*Legal Deadline:* None.

*Abstract:* This final rule amends the definition of short-term, limited

duration insurance, which is excluded from the definition of individual health insurance coverage under the Public Health Service Act. This document also sets forth amendments to the requirements for hospital indemnity or other fixed indemnity insurance to be considered an excepted benefit in the group and individual health insurance markets. This document further sets forth amendments to clarify the tax treatment of certain benefit payments in fixed amounts received under employer-provided accident and health plans.

*Statement of Need:* These changes support the goals of the Affordable Care Act (ACA) by increasing access to affordable and comprehensive coverage, strengthening health insurance markets, and promoting consumer understanding of coverage options. Consistent with E.O. 14094, and accompanying OIRA guidance on Broadening Public Participation and Community Engagement in the Regulatory Process, and E.O. 12866, the Departments met with interested parties representing consumer advocacy and supplemental benefits industry representatives at the request of those parties.

*Summary of Legal Basis:* The Department of Health and Human Services regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, 2792, 2794, 2799A–1 through 2799B–9 of the PHS Act (42 U.S.C. 300gg–300gg–63, 300gg–91, 300gg–92, 300gg–94, 300gg–300gg139), as amended.

*Alternatives:* In developing the rule, the Departments considered different approaches, including alternative amendments to the definition of short-term, limited-duration insurance, alternative amendments to the consumer notices for short-term, limited-duration insurance and fixed indemnity excepted benefits coverage, and alternative applicability timelines.

*Anticipated Cost and Benefits:* These changes are expected to increase consumer understanding of short-term, limited-duration insurance and fixed indemnity excepted benefits coverage as compared to comprehensive health insurance coverage and to strengthen markets for comprehensive health insurance coverage. These changes are also expected to reduce harm caused to consumers who enroll in short-term, limited- duration insurance or fixed indemnity excepted benefits coverage as an alternative to or replacement for comprehensive health insurance coverage. The changes to the definition of short-term, limited-duration insurance are expected to increase enrollment in comprehensive coverage, reduce gross premiums for individuals

enrolled in individual health insurance coverage purchased on an Exchange, and decrease Federal expenditures on the premium tax credit. These changes may increase premium costs for individuals who switch from short-term, limited-duration insurance to comprehensive health insurance coverage and are not eligible for government subsidies. They may also increase the number of uninsured individuals if some individuals with short-term, limited-duration insurance do not switch to comprehensive health insurance coverage or purchase short-term, limited-duration insurance from another issuer.

**Risks:** Due to a lack of data and information, areas of uncertainty include the forecasting of enrollment changes and the potential impacts to risk pools, premiums, Federal expenditures, and compensation for agents and brokers selling these products.

**Timetable:**

Action	Date	FR Cite
NPRM .....	07/12/23	88 FR 44596
NPRM Comment Period End.	09/11/23	
Final Action .....	04/00/24	

**Regulatory Flexibility Analysis**

**Required:** Undetermined.

**Government Levels Affected:** Federal, State.

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

**Agency Contact:** Lindsey Murtagh, Director, Market-Wide Regulation Division, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight, 7500 Security Boulevard, Baltimore, MD 21244, Phone: 301 492-4106, Email: lindsey.murtagh@cms.hhs.gov.

RIN: 0938-AU67

**HHS—CMS**

**73. Ensuring Access to Medicaid Services (CMS-2442) [0938-AU68]**

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

**Legal Authority:** 42 U.S.C. 1302  
**CFR Citation:** 42 CFR 431; 42 CFR 438; 42 CFR 441; 42 CFR 447.

**Legal Deadline:** None.

**Abstract:** This rule addresses elements related to assuring access in Medicaid and/or the Children's Health Insurance Program (CHIP). These elements include processes that support the implementation of a comprehensive

access strategy as well as payment processes, such as those related to specific payment systems.

**Statement of Need:** In order to assure equitable access to health care for all Medicaid and CHIP beneficiaries across all delivery systems, access regulations need to be multi-factorial and focus beyond payment rates. Barriers to accessing health care services can be as heterogeneous as Medicaid and CHIP populations which can be measured through provider availability and provider accessibility to realized or perceived access barriers which can be measured through utilization and satisfaction with services. The final rule takes a comprehensive approach to improving access to care, quality and health outcomes, and better addressing health equity issues in the Medicaid program across fee-for-service (FFS), managed care delivery systems, and in home and community-based services (HCBS) programs. These improvements seek to increase transparency and accountability, standardize data and monitoring, and create opportunities for States to promote active beneficiary engagement in their Medicaid programs, with the goal of improving access to care.

**Summary of Legal Basis:** Section 1902(a)(30)(A) of the Act requires states to "assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area." In addition, 2402(a) of the Affordable Care Act directs the Secretary to promulgate regulations ensuring that all states develop service systems that: (1) are responsive to the needs of beneficiaries receiving HCBS and enable them to maximize their independence; (2) provide necessary support and coordination for beneficiaries in need of such services and their caregivers; and (3) improve coordination and regulation of providers of such services to oversee and monitor functions, including a complaint system, and ensure that there are an adequate number of qualified direct care workers to provide self-directed services. Further, Section 1902(a)(4) of the Act is a longstanding statutory provision that, as implemented in part in regulations currently codified at 42 CFR 431.12, requires States to have a Medical Care Advisory Committee (MCAC) in place to advise the State Medicaid agency about health and medical care services.

**Alternatives:** In developing the policies contained in this rule, we

considered numerous alternatives, including maintaining existing requirements. These alternatives are described in the rule.

**Anticipated Cost and Benefits:** This rule is expected to result in potential costs for states to come into and remain in compliance. Estimates for associated costs are unknown at this time and may vary by state. Information about anticipated costs will be included in the rule.

**Risks:** Risks of this rule are still under development and will be included in the final rule.

**Timetable:**

Action	Date	FR Cite
NPRM .....	05/03/23	88 FR 27960
NPRM Comment Period End.	07/03/23	
Final Action .....	04/00/24	

**Regulatory Flexibility Analysis**

**Required:** No.

**Government Levels Affected:** State.

**Agency Contact:** Karen Llanos, Director, Medicaid Innovation Accelerator Program and Strategy Support, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid and CHIP Services, MS: S2-04-28, 7500 Security Boulevard, Baltimore, MD 21244, Phone: 410 786-9071, Email: karen.llanos@cms.hhs.gov.

RIN: 0938-AU68

**HHS—CMS**

**74. Coverage of Certain Preventive Services Under the Affordable Care Act (CMS-9903) [0938-AU94]**

**Priority:** Other Significant.

**Legal Authority:** Pub. L. 111-148, sec. 1001

**CFR Citation:** 45 CFR 147; 45 CFR 156.

**Legal Deadline:** None.

**Abstract:** This rule amends the final rules regarding religious and moral exemptions and accommodations regarding coverage of certain preventive services under title I of the Patient Protection and Affordable Care Act.

**Statement of Need:** Previous rules, regulations, and court decisions have left many women without contraceptive coverage and access to contraceptive services without cost sharing. This rule seeks to address religious objections to providing contraceptive coverage by honoring the entities' religious objections, while also ensuring that women enrolled in a group health plan established or maintained, or in health insurance coverage offered or arranged,

by an objecting entity described in 45 CFR 147.132(a), which does not invoke the optional accommodation (if eligible), have the opportunity to obtain contraceptive services at no cost. This rule would also eliminate the exemption for entities and individuals that object to contraceptive coverage based on non-religious moral beliefs, which prevents access to contraceptive services without cost sharing.

**Summary of Legal Basis:** The Department of Health and Human Services regulations are adopted pursuant to the authority contained in sections 2701 through 2763, 2791, 2792, 2794, 2799A–1 through 2799B–9 of the PHS Act (42 U.S.C. 300gg–63, 300gg–91, 300gg–92, 300gg–94, 300gg–139), as amended.

**Alternatives:** In developing this rule, the Departments considered various alternative approaches. The Departments considered maintaining the exemption (along with the existing accommodations and the proposed individual contraceptive arrangement) with respect to group health plans, health insurance issuers, and institutions of higher education that have a non-religious, moral objection to contraceptive coverage, the Departments considered an approach under which contraceptive coverage would be available through separate individual insurance policies that cover only contraceptives and in which participants, beneficiaries, and enrollees would have to separately enroll if they desired contraceptive coverage. The Departments also considered an approach under which, if an objecting entity designs or contracts for a health plan without contraceptive coverage, the contraceptive coverage requirement would apply directly to the issuer in the case of a fully insured plan, or the third party administrator in the case of a self-insured plan. The issuer or third party administrator would then be required to fulfill its separate and independent obligation to provide contraceptive coverage. With respect to the proposed changes to 45 CFR 156.50(d), in addition to the proposed submission requirements on the part of the participating issuer, HHS considered whether to condition a provider of contraceptive services' participation in the individual contraceptive arrangement on the submission to HHS of additional information. In addition to an arrangement with a participating issuer on the Federally-facilitated Exchange or a State-based Exchange on the Federal Platform, HHS considered

whether to allow a provider of contraceptive services to arrange with a third party administrator to submit documentation to HHS on their behalf under 45 CFR 156.50(d).

**Anticipated Cost and Benefits:** This rule is expected to increase access to contraceptive services without cost sharing through the individual contraceptive arrangement for eligible individuals and the elimination of the exemption for entities and individuals that object to contraceptive coverage based on non-religious moral beliefs. This rule would increase health equity given the disproportionate burden of out-of-pocket spending on contraceptive services currently faced by low-income individuals (as those individuals with lower incomes must spend a greater percentage of their incomes on contraceptive services). This rule would also lead to better health outcomes for eligible individuals by increasing access to contraceptive services and reducing unintended pregnancies. Participating providers of contraceptive services (including clinicians, facilities, and pharmacies) and issuers would incur costs associated with entering into signed agreements for reimbursement of costs associated with the provision of contraceptive services to eligible individuals, including costs of verifying consumer eligibility and other associated administrative costs. Eligible individuals would incur costs associated with participating in the individual contraception arrangement, including confirming eligibility to their provider of contraceptive services. HHS estimates the total cost to providers of contraceptive services, issuers, and eligible individuals to be approximately \$30.2 million annually. The rule would also lead to a reduction in health care costs for individuals, issuers, group health plan sponsors, and states due to reductions in unintended pregnancies.

**Risks:** The Departments do not have information on the number of entities and individuals that have claimed a moral exemption to providing contraceptive coverage and are therefore uncertain of the amount of the potential transfer from plans and issuers to participants, beneficiaries, and enrollees due to reduced out-of-pocket spending on contraceptive services associated with the proposed elimination of the exemption for entities and individuals that object to contraceptive coverage based on nonreligious moral beliefs. The Departments estimate that the provision of the individual contraceptive arrangement could lead to a transfer from the Federal Government to individuals (via issuers to providers of contraceptive services) of approximately

\$49.9 million annually. This estimate is uncertain due to the limited information available in the 2019 user fee adjustment data. The Departments are uncertain as to how the number of participating providers might vary (for example, across rural and urban areas) and how this variation might affect access to services under the individual contraceptive arrangement. Due to the lack of data, the Departments are unable to develop a precise estimate of the number of eligible individuals who might participate in the individual contraceptive arrangement. This overall lack of data leads to uncertainty regarding the magnitudes of the total cost savings to eligible individuals and any resulting potential cost savings to states (associated with reduced spending on State-funded programs that provide contraceptive services or a potential reduction in the number of unintended pregnancies that would otherwise impose costs to states).

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/02/23	88 FR 7236
NPRM Comment Period End.	04/03/23	
Final Action .....	08/00/24	

*Regulatory Flexibility Analysis*

*Required:* No.

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

*Agency Contact:* Lindsey Murtagh, Director, Market-Wide Regulation Division, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 301 492–4106, *Email:* lindsey.murtagh@cms.hhs.gov.

*RIN:* 0938–AU94

**HHS—CMS**

**75. Medicaid and Children's Health Insurance Program (CHIP) Managed Care Access, Finance, and Quality (CMS–2439) [0938–AU99]**

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 42 U.S.C. 1302  
*CFR Citation:* 42 CFR 430; 42 CFR 438; 42 CFR 457.

*Legal Deadline:* None.

*Abstract:* This rule implements additional parameters under managed care delivery systems related to access to care requirements, States' use of In Lieu of Services or Settings (ILOS), State directed payments, quality rating systems, and other policy and reporting

changes to ensure the efficient operation of State managed care programs.

**Statement of Need:** This rule advances CMS' efforts to improve access to care, quality and health outcomes, and better address health equity issues for Medicaid and CHIP managed care enrollees. The rule specifically addresses standards for timely access to care and States' monitoring and enforcement efforts, clarifies standards State directed payments and certain quality reporting requirements, adds new standards that would apply when States use ILOSs to promote effective utilization and identify the scope and nature of ILOS, specifies medical loss ratio (MLR) requirements, and establishes a quality rating system (QRS) for Medicaid and CHIP managed care plans.

**Summary of Legal Basis:** States may implement a Medicaid managed care delivery system using four Federal authorities: sections 1915(a), 1915(b), 1932(a), and 1115(a) of the Social Security Act (the Act), and a CHIP managed care delivery system using two Federal authorities sections 2101(a) and 2107(e)(2)(A) of the Act.

**Alternatives:** In developing the policies contained in this rule, we considered numerous alternatives, including maintaining existing requirements. These alternatives are described in the rule.

**Anticipated Cost and Benefits:** We anticipate that most of the provisions in this rule will minimally or moderately increase administrative burden and associated costs. Certain provisions including State directed payments, MLR reporting standards, and ILOS could potentially have a significant impact on the associated and corresponding managed care payments. Information about anticipated costs will be included in the final rule.

**Risks:** Risks of this rule are still under development and will be included in the published rule.

**Timetable:**

Action	Date	FR Cite
NPRM .....	05/03/23	88 FR 28092
NPRM Comment Period End.	07/03/23	
Final Action .....	04/00/24	

**Regulatory Flexibility Analysis Required:** No.

**Government Levels Affected:** State.

**Agency Contact:** John Giles, Director, Division of Managed Care Policy, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicaid and CHIP Services, MS: S2-01-16, 7500

Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786-1255, *Email:* john.giles1@cms.hhs.gov.  
*RIN:* 0938-AU99

## HHS—CMS

### Long-Term Actions

#### 76. Disclosures of Ownership and Additional Disclosable Parties Information for Skilled Nursing Facilities and Nursing Facilities (CMS-6084) [0938-AU90]

**Priority:** Other Significant.

**Legal Authority:** 42 U.S.C. 1302; 42 U.S.C. 1395hh

**CFR Citation:** 42 CFR 424; 42 CFR 455.

**Legal Deadline:** Final, Statutory, February 15, 2026, MMA sec. 902 requires Medicare final rules publish within 3 years of a proposed or interim final rule.

Per the CMS notice published December 30, 2004 (69 FR 78442), except for certain Medicare payment regulations and certain other statutorily-mandated regulations, we schedule all Medicare final regulations for publication within the 3-year standardized time limit in the current Unified Agenda. We do not intend to delay publishing a Medicare final regulation for 3 years if we are able to publish it sooner.

**Abstract:** This rule implements portions of section 6101 of the Patient Protection and Affordable Care Act (Affordable Care Act), which requires the disclosure of certain ownership, managerial, and other information regarding Medicare skilled nursing facilities (SNFs) and Medicaid nursing facilities.

**Statement of Need:** This rule is necessary for CMS and states to obtain important data about the owners and operators of nursing facilities. This will better enable CMS and states to monitor the ownership and management of these providers; this is an especially critical consideration given documented quality issues and differences in outcomes in nursing facilities with certain types of owners, such as private equity firms. The rule would also serve as an important component of this Administration's initiative to improve the safety, quality, and accountability of nursing homes.

**Summary of Legal Basis:** Section 6101(a) of the Affordable Care Act (Pub. L. 111-148) added a new section 1124(c) to the Social Security Act (the Act). This provision established requirements for the disclosure of information about the owners and

operators of Medicare SNFs and Medicaid nursing facilities.

**Alternatives:** None. This rule implements a statutory requirement.

**Anticipated Cost and Benefits:** We believe the data furnished under this regulation will help CMS more closely monitor the ownership and management of nursing facilities. This, in conjunction with the Administration's other initiatives, could help improve beneficiary care, although potential benefits cannot be monetarily quantified. As discussed in the published proposed rule, the lone category of costs associated with this rule involves nursing facilities' submission of the required information. We do not anticipate any direct savings or transfers principally because the rule merely involves the submission of data for CMS or state review.

**Risks:** No risks are anticipated.

**Timetable:**

Action	Date	FR Cite
NPRM .....	02/15/23	88 FR 9820
NPRM Comment Period End.	04/14/23	
Final Action .....	02/00/26	

#### Regulatory Flexibility Analysis

**Required:** No.

**Government Levels Affected:** Federal, State.

**Agency Contact:** Frank Whelan, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Program Integrity, MS: AR-18-50, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786-1302, *Email:* frank.whelan@cms.hhs.gov.

*RIN:* 0938-AU90

## HHS—CMS

### Completed Actions

#### 77. Hospital Outpatient Prospective Payment System: Remedy for 340B-Acquired Drugs Purchased in Cost Years 2018-2022 (CMS-1793) (Section 610 Review) [0938-AV18]

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

**CFR Citation:** 42 CFR 419.

**Abstract:** This final rule describes the agency's actions to comply with the remand from the district court to craft a remedy in light of the United States Supreme Court's decision in *American Hospital Association v. Becerra*, 142 S. Ct. 1896 (2022), relating to the adjustment of Medicare payment rates for drugs acquired under the 340B

Program from calendar year (CY) 2018 through September 27th of CY 2022.

**Statement of Need:** From CY 2018 through September 27th of CY 2022, CMS paid a lower rate (generally ASP minus 22.5 percent) to certain hospitals for drugs acquired through the 340B discount program. The purpose of this policy was to pay these hospitals for 340B drugs at a rate that more accurately reflected the actual costs they incurred to acquire them. This 340B policy was the subject of several years of litigation, which culminated in a decision of the Supreme Court of the United States in *American Hospital Association v. Becerra*, 142 S. Ct. 1896 (2022), which held that if CMS has not conducted a survey of hospitals' acquisition costs, it may not vary the payment rates for outpatient prescription drugs by hospital group. The Supreme Court subsequently remanded the case, and the district court ultimately ordered CMS to implement a remedy to address the reduced payment amounts to the plaintiff hospitals from CY 2018 through September 27th of CY 2022.

**Summary of Legal Basis:** Under the Hospital Outpatient Prospective Payment System (OPPS), we generally set payment rates for separately payable drugs and biologicals (hereinafter referred to collectively as drugs) under section 1833(t)(14)(A) of the Social Security Act (the Act). Section 1833(t)(14)(A)(iii)(II) of the Act provides that, if hospital acquisition cost data are not available, the payment amount is the average price for the drug in a year established under section 1842(o), section 1847A, or section 1847B of the Act, as the case may be. Payment rates for drugs are usually established under section 1847A of the Act, which generally sets a default rate of the average sales price (ASP) plus 6 percent. Section 1833(t)(14)(A)(iii)(II) of the Act also provides that the average price for the drug in the year as established under section 1847A of the Act is calculated and adjusted by the Secretary of the Department of Health and Human Services (Secretary) as necessary for purposes of paragraph (14).

**Alternatives:** We evaluated several options to determine which remedy would best achieve the objectives of unwinding the unlawful 340B payment policy while making certain OPPS providers as close to whole as is administratively feasible. A discussion of these options, including our reasons for not moving forward with them, will be included in the final rule.

**Anticipated Cost and Benefits:** To comply with statutory budget neutrality requirements, we plan to annually

reduce OPPS payments for non-drug items and services beginning in CY 2025 by decreasing the OPPS conversion factor by 0.5 percent each year, until a total offset of an estimated \$7.8 billion is reached.

**Risks:** Any risks regarding potential impacts will be included in the final rule.

**Completed:**

Reason	Date	FR Cite
NPRM .....	07/11/23	88 FR 44078
Final Action .....	11/08/23	88 FR 77150
Final Action Effective.	01/08/24	

**Regulatory Flexibility Analysis Required:** Yes.

**Small Entities Affected:** Businesses, Governmental Jurisdictions.

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

**Agency Contact:** Elise Barringer, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4-03-06, 7500 Security Boulevard, Baltimore, MD 21244, Phone: 410 786-9222, Email: [elise.barringer@cms.hhs.gov](mailto:elise.barringer@cms.hhs.gov).

RIN: 0938-AV18

## HHS—ADMINISTRATION FOR CHILDREN AND FAMILIES (ACF)

Proposed Rule Stage

### 78. Strengthening Temporary Assistance for Needy Families (TANF) as a Safety Net Program [0970-AC97]

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

**Legal Authority:** 42 U.S.C. 609

**CFR Citation:** 45 CFR 260.

**Legal Deadline:** None.

**Abstract:** This rule would improve the effectiveness and integrity of the Temporary Assistance for Needy Families (TANF) program as a safety net program by clarifying allowable uses of TANF funds and reducing administrative burden. The rule takes into account concerns from Members of Congress from both parties who are focused on ensuring TANF funds are serving their intended purpose, and advances the Biden-Harris Administration's priority for economic growth through investment in American families. The rule aims to ensure TANF funds are used in accordance with the statute, focusing on services that support families to meet their basic needs, get access to opportunities in the job market, and remain together.

**Statement of Need:** In fiscal year (FY) 2020, combined federal TANF and state

maintenance-of-effort (MOE) expenditures and transfers totaled \$31.6 billion. Of that amount only 22 percent was spent on basic assistance, compared to 71 percent in FY 1997. As a result, TANF currently serves less than 25 percent of eligible families across the country, as compared to 1997 when TANF served almost 70 percent of eligible families. The rule aims to address these shortcomings and would align with the Administration's efforts to increase opportunities for economic mobility for low-income families. The NPRM may consider changes around use of funds, eligible families, state MOE spending, and work flexibilities.

**Summary of Legal Basis:** The proposed regulations will relate to allowable spending, eligible work activities and penalties, and administrative simplification. The NPRM would be issued under the Secretary's authority to issue regulations where Congress has charged the Department with enforcing penalties, 42 U.S.C. 609.

**Alternatives:** In the absence of these regulatory changes, states will not experience any relief in their administrative burden to operate the TANF program and these changes will improve program integrity and access to services.

**Anticipated Cost and Benefits:** This NPRM imposes no costs on the Federal government nor does it change overall funding amounts for States, territories, and tribes, as TANF is a fixed block grant. We anticipate a benefit in the transfer of funding toward critical supports to families experiencing economic hardships.

**Risks:** While we expect more low-income families to receive TANF benefits and receive more effective work-related services, this action may result in states having to increase their own spending to fund activities previously funded by federal TANF dollars or previously counted as state MOE spending.

**Timetable:**

Action	Date	FR Cite
NPRM .....	10/02/23	88 FR 67697
NPRM Comment Period End.	12/01/23	
Final Action .....	04/00/24	

**Regulatory Flexibility Analysis Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** None.

**Agency Contact:** Deborah List, Associate Deputy Director, Office of Family Assistance, Department of Health and Human Services,



Administration for Children and Families, 330 C Street SW, Washington, DC 20201, Phone: 202 401-5488, Email: [deborah.list@acf.hhs.gov](mailto:deborah.list@acf.hhs.gov).  
RIN: 0970-AC97

## HHS—ACF

### 79. Employment and Training Services for Noncustodial Parents in the Child Support Services Program [0970-AD00]

*Priority:* Other Significant.

*Legal Authority:* 42 U.S.C. 1302

*CFR Citation:* 45 CFR part 302; 45 CFR part 303; 45 CFR part 304.

*Legal Deadline:* None.

*Abstract:* In an effort to make the child support program more effective and to increase regular child support payments, the Office of Child Support Services will propose to allow child support agencies to strengthen supportive services for noncustodial parents.

*Statement of Need:* Currently, IV-D agencies have many enforcement tools to collect child support from noncustodial parents who are able to pay their child support, but these enforcement tools are less effective in collecting support from unemployed noncustodial parents. Many of these parents face significant barriers to employment and could benefit from employment and training services, but rarely receive them. This Notice of Proposed Rulemaking (NPRM) would explore options for providing nonduplicative employment and training services to unemployed noncustodial parents, which will help them become employed and pay their child support.

*Summary of Legal Basis:* This NPRM is published under the authority granted to the Secretary of Health and Human Services by section 1102 of the Social Security Act (Act), 42 U.S.C. 1302.

*Alternatives:* There are no satisfactory alternatives to publishing this NPRM that provide improved child support program effectiveness.

*Anticipated Cost and Benefits:* To Be Determined.

*Risks:* None.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/23	

*Regulatory Flexibility Analysis*

*Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Agency Contact:* Chad Edinger, Program Specialist, Department of Health and Human Services,

Administration for Children and Families, 330 C Street SW, Washington, DC 20201. Phone: 303 844-1213, Email: [chad.edinger@acf.hhs.gov](mailto:chad.edinger@acf.hhs.gov).  
RIN: 0970-AD00

## HHS—ACF

### 80. Supporting the Head Start Workforce and Other Quality Improvements [0970-AD01]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 42 U.S.C. 9801; 42 U.S.C. 9836a; 42 U.S.C. 9839

*CFR Citation:* 45 CFR parts 1302 and 1305.

*Legal Deadline:* None.

*Abstract:* This NPRM will propose changes to the Head Start Program Performance Standards to better support the Head Start workforce and to maintain the quality of comprehensive Head Start services.

*Statement of Need:* This notice of proposed rulemaking (NPRM) proposes to add new provisions to the Head Start Program Performance Standards to increase pay and support the Head Start workforce, make improvements to the overall quality of Head Start program services, and strengthen mental health supports. Head Start programs serve hundreds of thousands of children ages birth to five, pregnant women, and their families each year. This NPRM is critical to improving the quality, stability, and continuity of Head Start services for children and families.

*Summary of Legal Basis:* ACF publishes this NPRM under the authority granted to the Secretary of Health and Human Services by sections 641A, 645, 645A, 648A, and 653 of the Act (42 U.S.C. 9836a, 9840, 9840a, 9843a, and 9848), as amended by the Improving Head Start for School Readiness Act of 2007 (Pub. L. 110-134).

*Alternatives:* One alternative is to keep the status quo and not put forward this proposed rule. This would likely result in the workforce crisis continuing, which ultimately has a negative impact on the quality of services for the children and families Head Start aims to serve and enrollment levels may continue to decline as programs have difficulty filling vacancies.

Another alternative is to allow this NPRM to be published and move forward to a final rule. This would stabilize the Head Start workforce and enable Head Start programs to provide consistent, high-quality services to children and families.

*Anticipated Cost and Benefits:* The costs associated with this proposed rule include the funding required for implementing compensation requirements proposed in the rule. Another potential cost is that burden on programs may temporarily increase as they work to implement the proposed requirements.

The benefits associated with the proposed rule include a more stable Head Start workforce and high-quality services consistently provided to all children and families served by Head Start. ACF strongly believes the anticipated benefits of this proposed rule far outweigh the potential costs.

*Risks:* None.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Small Entities Affected:* Businesses, Organizations.

*Government Levels Affected:* None.

*Agency Contact:* Lindsey A.

Hutchison, Senior Policy Analyst, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, #4305B, Washington, DC 20201, Phone: 904 860-7032, Email: [lindsey.hutchison@acf.hhs.gov](mailto:lindsey.hutchison@acf.hhs.gov).

RIN: 0970-AD01

## HHS—ACF

### 81. • Safe and Appropriate Foster Care Placement Requirements for Titles IV-E and IV-B (Section 610 Review) [0970-AD03]

*Priority:* Other Significant.

*Legal Authority:* 42 U.S.C. 671(a)(16); 42 U.S.C. 622(b)(8)(A)(ii); 42 U.S.C. 675(1)(B); 42 U.S.C. 675(5))

*CFR Citation:* CFR 1355.22; CFR 1355.34.

*Legal Deadline:* None.

*Abstract:* This rule will propose to clarify that title IV-E/IV-B agencies are required to offer safe and appropriate foster care placements, including processes to ensure children can request such placements and agencies must respond to concerns about those placements, for children in foster care who identify as lesbian, gay, bisexual, transgender, queer or questioning, intersex (LGBTQI+). The rule will not interfere with faith-based child welfare providers continue to partner with title IV-E/IV-B agencies in a way that does not interfere with those providers' sincerely held religious beliefs.

*Statement of Need:* To support States and tribes in complying with Federal laws that require that all children in foster care receive safe and proper care, the proposed rule would clarify the processes and requirements to State child welfare agencies must follow to ensure children in foster care who identify as LGBTQI+ are provided with placements the agency designates as safe and appropriate for an LGBTQI+ child, and with services that are necessary to support their health and wellbeing. These requirements clarify how title IV–E/IV–B agencies must meet IV–E and IV–B statutory requirements, including for the case review system and case plan, to appropriately serve children in foster care who identify as LGBTQI+. While the general requirements for the case review system are not new, ACF is proposing to prescribe how agencies must implement the requirements to provide placements and services to children in foster care who identify as LGBTQI+.

*Summary of Legal Basis:* Sections 471(a)(16), 422(b), and 475(1)(B) of the Social Security Act.

*Alternatives:* As an alternative to this NPRM, ACF has already provided sub-regulatory guidance requiring agencies to implement the provisions of the NPRM for children who identify as LGBTQI+. However, this guidance did not have the force of law and thus was not sufficient to effectively ensure that LGBTQI+ children and youth in foster care receive appropriate placements and services.

*Anticipated Cost and Benefits:* The benefits of this NPRM are that placing children in foster care with providers the agencies designate as safe and appropriate for LGBTQI+ children will reduce the negative experiences of such children by allowing them to have access to needed care and services and to be placed in nurturing placement settings with caregivers who have received appropriate training. Ensuring such placements may also reduce LGBTQI+ foster children's high rates of homelessness, housing instability and food insecurity. ACF acknowledges that there will be a cost to implement changes made by this proposed rule as we anticipate that a majority of states would need to expand their efforts to recruit and identify providers and foster families that the state or tribe could designate as safe and appropriate placements for a LGBTQI+ child. This cost would vary depending on an agency's available resources to implement a final rule, though Federal financial participation is available to agencies for eligible administrative expenses, including expenses for

recruiting and identifying providers and foster families that could be designated as safe and appropriate placements for an LGBTQI+ child.

*Risks:* TBD.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/28/23	88 FR 66752
NPRM Comment Period End..	11/27/23	
Final Action .....	04/00/24	

#### *Regulatory Flexibility Analysis*

*Required:* No.

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

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

*Agency Contact:* Kathleen McHugh, Director, Division of Policy, Children's Bureau, ACYF/ACF/HHS, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, Room 3411, Washington, DC 20201, *Phone:* 202 401–5789, *Fax:* 202 205–8221, *Email:* kmchugh@acf.hhs.gov.

*RIN:* 0970–AD03

## **HHS—ACF**

### **Final Rule Stage**

#### **82. Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF) [0970–AD02]**

*Priority:* Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

*Legal Authority:* The Child Care and Development Block Grant (CCDBG) Act of 1990, as amended (42 U.S.C. 9858 *et seq.*); sec.418 of the Social Security Act (42 U.S.C. 618)

*CFR Citation:* 45 CFR part 98.

*Legal Deadline:* None.

*Abstract:* This final rule would update the Child Care and Development Fund (CCDF) regulations to ease eligible families' enrollment in the child care subsidy system and increase participating families' access to a range of high-quality child care options for which they may use child care subsidies. The changes would address: (1) Family copayments; (2) provider payment rates and practices; (3) child eligibility determination and re-determination; and (4) technical changes.

*Statement of Need:* This final rule amends Child Care and Development Fund (CCDF) regulations in four areas: (1) family co- payments; (2) provider

payment rates and practices; (3) child enrollment and eligibility determination; and, (4) technical changes. These changes will lower child care costs for families, increase parent's child care options, reduce barriers to receiving child care assistance, increase payments to providers, support higher program quality, and improve child care stability.

The Child Care and Development Block Grant (CCDBG) Act, together with Section 418 of the Social Security Act, authorize the CCDF, which is the primary Federal funding source devoted to supporting families with low incomes access child care and to increasing the quality of child care for all children. Fiscal year (FY) 2023 funding was over \$11 billion by formula to states, territories, and tribes. CCDF child care subsidies support children's positive and healthy development and family economic wellbeing, enabling parents to pursue employment, education, and training opportunities. More than 900,000 families and 1.5 million children benefit from CCDF financial assistance each month.

Congress last authorized the CCDBG Act in 2014, and the Department of Health and Human Services (HHS) published final regulations clarifying the new provisions of the Act in September 2016. These statutory and regulatory actions included significant changes to the CCDF program. In the years since 2016 Final Rule, CCDF agencies have taken significant steps to implement the requirements, but child care remains a broken system in crisis due to chronic underinvestment. Parents struggle to find affordable high-quality child care that meets their needs, and the system relies on a poorly compensated workforce and unaffordable parent fees.

This final rule builds on the 2016 final rule and to create a stronger child care assistance program that will better meet the needs of children, families, and child care providers. It provides additional clarity around key policies that are needed to provide more help for families so they can find child care that meets their families' needs and for the continued stabilization of the child care sector.

*Summary of Legal Basis:* ACF publishes this final rule under the authority granted to the Secretary of Health and Human Services (the Secretary) by the Child Care and Development Block Grant (CCDBG) Act of 1990, as amended (42 U.S.C. 9857, *et seq.*) and section 418 of the Social Security Act (42 U.S.C. 618).

*Alternatives:*

*Alternative 1:* One alternative is to publish this final rule, which will lower family costs, increase parent's options for child care, help families receive more timely assistance, increase payments to child care providers, incentivize child care providers to accept CCDF subsidies, help stabilize the child care sector, and improve child care quality.

*Alternative 2:* Another alternative is to keep the status quo, which will continue current fees and policies that limit a family's ability to participate in the CCDF program and access child care, payment practices that limit parent choices and undermine child care provider stability, and eligibility processes that create barriers to the child care subsidy.

*Anticipated Cost and Benefits:* Changes made by this final rule would have the most direct benefit for the over 900,000 families and 1.5 million children who use CCDF assistance to help pay for child care each month. Families who receive CCDF assistance will benefit from lower parent co-payments, more parental options for child care arrangements, expanded and easier access to child care which could improve the ability of families to participate in the labor market, and improved eligibility determination processes.

Providers will benefit from fairer payment practices that support their financial stability, including payments that more accurately reflect the cost of providing high quality care, which can lead to higher wages for providers and their staff.

The cost of implementing these changes would vary based on a state, territory, or Tribe's specific situation and implementation choices. Some states may also need to invest in IT and systems changes.

*Risks:* None.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/13/23	88 FR 45022
NPRM Comment Period End.	08/28/23	
Final Action .....	04/00/24	

*Regulatory Flexibility Analysis Required:* No.

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

*Agency Contact:* Megan Campbell, Child Care Policy Supervisor, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, Washington, DC 20201, *Phone:* 202 690-6499, *Fax:* 202 690-5600, *Email:* [megan.campbell@acf.hhs.gov](mailto:megan.campbell@acf.hhs.gov).

RIN: 0970-AD02

## HHS—ACF

### Completed Actions

#### 83. Separate Licensing Standards for Relative or Kinship Foster Family Homes [0970-AC91]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*CFR Citation:* 45 CFR 1355.20.

*Abstract:* This regulation allows title IV-E agencies to adopt separate licensing standards for relative or kinship foster family homes.

*Statement of Need:* Currently, the regulation provides that in order to claim title IV-E, all foster family homes must meet the same licensing standards, regardless of whether the foster family home is a relative or non-relative placement. This Notice of Proposed Rulemaking (NPRM) allows a title IV-E agency to adopt licensing or approval standards for all relative foster family homes that are different from the licensing standards used for non-related foster family homes.

*Summary of Legal Basis:* This NPRM is published under the authority granted to the Secretary of Health and Human Services by section 1102 of the Social Security Act (Act), 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions for which the Secretary is responsible pursuant to the Act. Section 472 of the Act authorizes federal reimbursement for a FCMP for an otherwise eligible child when the child is placed in a fully licensed or approved foster family home.

*Alternatives:* There are no satisfactory alternatives to publishing this NPRM. This change cannot be made in sub-regulatory guidance.

*Anticipated Cost and Benefits:* This NPRM impacts state and tribal title IV-E agencies and does not impose a burden. The title IV-E agency has discretion to develop separate licensing standards for relatives and non-relatives and if they do so, they may claim title IV-E funding. ACF estimates that the proposed regulatory change would cost the Federal Government \$3.085 billion in title IV-E foster care federal financial participation over 10 years.

*Risks:* None.

*Completed:*

Reason	Date	FR Cite
Final Action .....	09/28/23	88 FR 66700

Reason	Date	FR Cite
Final Action Effective.	11/27/23	

### Regulatory Flexibility Analysis

*Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Agency Contact:* Kathleen McHugh, Director, Division of Policy, Children's Bureau, ACYF/ACF/HHS, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, Room 3411, Washington, DC 20201, *Phone:* 202 401-5789, *Fax:* 202 205-8221, *Email:* [kmchugh@acf.hhs.gov](mailto:kmchugh@acf.hhs.gov).

RIN: 0970-AC91

## HHS—ADMINISTRATION FOR COMMUNITY LIVING (ACL)

### Proposed Rule Stage

#### 84. Adult Protective Services Functions and Grant Programs [0985-AA18]

*Priority:* Other Significant.

*Legal Authority:* Elder Justice Act (SSA sec. 2042, [42 U.S.C. 1397m-1] (a) Secretarial Responsibilities)

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* None.

*Abstract:* The final rule would create federal regulations for Adult Protective Services (APS) programs as authorized by the Elder Justice Act. APS programs were originally recognized by federal law in 1975 under title XX of the Social Security Act via the Social Services Block Grant (SSBG). States have wide discretion whether to allocate any funding to APS via the SSBG program, and there are no regulations pertaining to APS under SSBG. Since 1975, all 50 states, the District of Columbia, and four territories have developed APS programs in accordance with local needs, structures, and laws. Historic investments through the Coronavirus Relief and Response Supplemental Appropriations Act (CRRSA) and the American Rescue Plan Act (ARPA) provided the very first funding for APS program formula funding to states as authorized by the Elder Justice Act (EJA). These regulations would promote an effective APS response across the country so that all older adults and adults with disabilities, regardless of the state or jurisdiction in which they live, have similar protections and service delivery from APS systems. Following release of the NPRM, ACL held a stakeholder call open to all of the public on September 18, 2023, that provided a walkthrough of the proposed rule and background resources and information

on how to comment. ACL also held a separate stakeholder call with Tribal grantees and leadership regarding the same. ACL has created a specific stakeholder web page at <https://acl.gov/APSRule>, which includes a summary of the rule and how to comment.

**Statement of Need:** The proposed rule would create federal regulations for Adult Protective Services (APS) programs as authorized by the Elder Justice Act (EJA). These regulations are critical in establish consistent national requirements and standards for EJA APS program formula funding to states.

**Summary of Legal Basis:** Development, promulgation and implementation of this regulation will be carried out consistently with the statute; however, this regulatory action is not required by the statute or a court order.

**Alternatives:** ACL considers sub-regulatory guidance, information and education outreach, and voluntary approaches as alternatives to regulatory action. Prior to the availability of appropriations for formula funding for this program ACL utilized guidance and voluntary approach for the establishment of a national data system and in supporting the establishment and dissemination of program best practices. However, now that federal funding is available to all states and territories, none of these alternatives are the appropriate option for promulgating and administering the provisions that will be included in the regulations consistent with statute. Economic incentives and instruments are not an option.

**Anticipated Cost and Benefits:** The proposed rule will require the revision of State policies and procedures, require training on new rules for APS staff, require the submission of new State plans, require data sharing agreements between APS systems and other State entities, require APS systems create a feedback loop to provide information to mandatory reporters, require data reporting to ACL, inform potential APS clients of their rights under State law, and require new or updated record retention systems for certain States. The rule will result in improved consistency in implementation of APS systems within and across States, clarity of obligations associated with Federal funding for administrators of APS systems and will result in better and more effective service delivery within and across States with better quality investigations in turn leading to more person-directed outcomes. The rule is anticipated to cost a total of \$3,532,916.99 to fully implement. This cost will be offset by improved

investigations and better outcomes for the victims of adult maltreatment. This represents significant value, particularly given the widespread and egregious nature of adult maltreatment in the United States.

**Risks:** These regulations would establish first ever regulations for APS programs consistent with the Elder Justice Act passed in 2010. Promulgating this NPRM and obtaining public feedback in order to issue a new final rule will result in decreased risk for administering agencies at the federal, state and local level in ensuring the administration of appropriations for APS programs consistent with the statute, and in also supporting the statute's programmatic purpose of detecting, preventing and reducing the abuse, neglect and exploitation of adults, including older adults.

**Timetable:**

Action	Date	FR Cite
NPRM .....	09/12/23	88 FR 62503
NPRM Comment Period End.	11/13/23	
Final Action .....	05/00/24	

**Regulatory Flexibility Analysis Required:** No.  
**Small Entities Affected:** No.  
**Government Levels Affected:** State.  
**Federalism:** This action may have federalism implications as defined in E.O. 13132.  
**Agency Contact:** Richard Nicholls, Chief of Staff and Executive Secretary, Department of Health and Human Services, Administration for Community Living, 330 C Street SW, Room 1004B, Washington, DC 20201, Phone: 202 795-7415, Fax: 202 205-0399, Email: [rick.nicholls@acl.hhs.gov](mailto:rick.nicholls@acl.hhs.gov)  
**RIN:** 0985-AA18

**BILLING CODE 4150-03-P**

**DEPARTMENT OF HOMELAND SECURITY (DHS)**

**Fall 2023 Statement of Regulatory Priorities**

The Department of Homeland Security (DHS or Department) was established in 2003 pursuant to the Homeland Security Act of 2002, Public Law 107-296. The DHS mission statement provides the following: “With honor and integrity, we will safeguard the American people, our homeland, and our values.”

DHS was created in the aftermath of the horrific attacks of 9/11, and its distinctive mission is defined by those words. The phrase “homeland security” refers to the security of the American

people, the homeland (understood in the broadest sense), and the nation’s defining values. A central part of the mission of protecting “our values” includes fidelity to law and the rule of law, reflected above all in the Constitution of the United States, and also in statutes enacted by Congress, including the Administrative Procedure Act. That commitment is also associated with a commitment to individual dignity. Among other things, the attacks of 9/11 were attacks on that value as well.

The regulatory priorities of DHS are founded on an insistence on the rule of law—and also on a belief that individual dignity, symbolized and made real by the opening words of the Constitution (“We the People”), the separation of powers, and the Bill of Rights (including the Due Process Clause), helps to define our mission.

Fulfilling that mission requires the dedication of more than 240,000 employees in jobs that range from aviation and border security to emergency response, from cybersecurity analyst to chemical facility inspector, from the economist seeking to identify the consequences of our actions to the scientist and policy analyst seeking to make the nation more resilient against flooding, drought, extreme heat, and wildfires. Our duties are wide-ranging, but our goal is clear: keep America safe.

There are six overarching homeland security missions that make up DHS’s strategic plan: (1) Counter terrorism and homeland security threats; (2) secure U.S. borders and approaches; (3) secure cyberspace and critical infrastructure; (4) preserve and uphold the Nation’s prosperity and economic security; (5) strengthen preparedness and resilience (including resilience from risks actually or potentially aggravated by climate change); and (6) champion the DHS workforce and strengthen the Department. See also 6 U.S.C. 111(b)(1) (identifying the primary mission of the Department).

In promoting these goals, we attempt to evaluate our practices by reference to evidence and data, and to improve them in real time. We also attempt to deliver our multiple services in a way that, at once, protects the American people and does not impose excessive or unjustified barriers and burdens on those who use them.

In achieving those goals, we are committed to public participation and to listening carefully to the American people (and to noncitizens as well). We are continually strengthening our partnerships with communities, first responders, law enforcement, and Government agencies—at the Federal,

State, local, tribal, and international levels. We are accelerating the deployment of science, technology, and innovation in order to make America more secure against risks old and new—and to perform our services better. We are becoming leaner, smarter, and more efficient, ensuring that every security resource is used as effectively as possible. We are reducing administrative burdens and simplifying our processes. For a further discussion of our mission, see the DHS website at <https://www.dhs.gov/mission>.

The regulations we have summarized below in the Department's Fall 2023 regulatory plan and agenda support the Department's mission. We are committed to continuing evaluation of our regulations, consistent with Executive Order 13563, and Executive Order 13707, and in a way that improves them over time. These regulations will improve the Department's ability to accomplish its mission. Also, these regulations address legislative initiatives such as the ones found in the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) and the FAA Extension, Safety, and Security Act of 2016.

We emphasize here our commitments (1) To fidelity to law; (2) to treating people with dignity and respect; (3) to increasing national resilience against multiple risks and hazards, including those actually or potentially associated with climate change; (4) to modernization of existing requirements; and (5) to reducing unjustified barriers and burdens, including administrative burdens.

DHS strives for organizational excellence and uses a centralized and unified approach to managing its regulatory resources. The Office of the General Counsel manages the Department's regulatory program, including the agenda and regulatory plan. In addition, DHS senior leadership reviews each significant regulatory project in order to ensure that the project fosters and supports the Department's mission.

The Department is committed to ensuring that all of its regulatory initiatives are aligned with its guiding principles to remain faithful to law, protect civil rights and civil liberties, integrate our actions, listen to those affected by our actions, build coalitions and partnerships, develop human resources, innovate, and be accountable to the American public.

DHS is strongly committed to the principles described in Executive Orders 13563 and 12866 (as amended). Both Executive Orders direct agencies to

assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13563 explicitly draws attention to human dignity and to equity.

Finally, the Department values public involvement in the development of its regulatory plan, agenda, and regulations. It is particularly concerned with the impact its regulations have on small businesses and startups, consistent with its commitment to promoting economic growth. DHS is also concerned to ensure that its regulations are equitable, and that they do not have unintended or adverse effects on (for example) women, disabled people, people of color, or the elderly. Its general effort to modernize regulations, and to remove unjustified barriers and burdens, is meant in part to avoid harmful effects on small businesses, startups, and disadvantaged groups of multiple sorts. DHS and its components continue to emphasize the use of plain language in our regulatory documents to promote a better understanding of regulations and to promote increased public participation in the Department's regulations. We want our regulations to be transparent and "navigable," so that people are aware of how to comply with them (and in a position to suggest improvements). DHS and its components regularly seek public input on regulatory plans, including through Requests for Information and Advanced Notices of Proposed Rulemaking, listening sessions, Federal Advisory Committees, and more.

The Fall 2023 regulatory plan for DHS includes regulations from multiple DHS components, including the Federal Emergency Management Agency (FEMA), U.S. Citizenship and Immigration Services (USCIS), the U.S. Coast Guard (the Coast Guard), U.S. Customs and Border Protection (CBP), Transportation Security Administration (TSA), U.S. Immigration and Customs Enforcement (ICE), and the Cybersecurity and Infrastructure Security Agency (CISA). We next describe the regulations that comprise the DHS fall 2023 regulatory plan.

#### **Federal Emergency Management Agency**

The Federal Emergency Management Agency (FEMA) is the government agency responsible for helping people before, during, and after disasters.

FEMA supports the people and communities of our Nation by providing experience, perspective, and resources in emergency management. FEMA is particularly focused on national resilience in the face of the risks of flooding, drought, extreme heat, and wildfire; it is acutely aware that these risks, and others, are actually or potentially aggravated by climate change. FEMA seeks to ensure, to the extent possible, that changing weather conditions do not mean a more vulnerable nation. FEMA is also focused on individual equity, and it is aware that administrative burdens and undue complexity might produce inequitable results in practice.

Consistent with President Biden's Executive Order on Climate Related Financial Risk (Executive Order 14030), FEMA will propose a regulation titled *National Flood Insurance Program: Standard Flood Insurance Policy, Homeowner Flood Form*. The National Flood Insurance Program (NFIP), established pursuant to the National Flood Insurance Act of 1968, is a voluntary program in which participating communities adopt and enforce a set of minimum floodplain management requirements to reduce future flood damages. Property owners in participating communities are eligible to purchase NFIP flood insurance. This proposed rule would revise the Standard Flood Insurance Policy by adding a new Homeowner Flood Form and five accompanying endorsements. The new Homeowner Flood Form would replace the Dwelling Form as a source of coverage for homeowners of one-to-four family residences. Together, the new Form and endorsements would more closely align with property and casualty homeowners' insurance and provide increased options and coverage in a more user-friendly and comprehensible format.

FEMA will also publish an Interim Final Rule (IFR) titled *Individual Assistance Program Equity* to further align with Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government and Executive Order 14091, Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. FEMA will amend its Individual Assistance (IA) program regulations to increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, FEMA will increase eligibility for home repair assistance by amending the definitions

and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allow for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplify the documentation requirements for continued temporary housing assistance; simplify the appeals process; simplify the process to request approval for a late registration; remove the requirement to apply for a Small Business Administration loan as a condition of eligibility for Other Needs Assistance (ONA); and establish additional assistance under ONA for serious needs, displacement, disaster-damaged computing devices, and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multi-family rental housing, child care assistance, maximum assistance limits, and waiver authority.

FEMA informed the development of this IFR by seeking input on regulatory changes to the Individuals and Households Program (IHP) through an Request for Information (RFI) published on April 22, 2021, seeking public input on its programs, regulations, collections of information, and policies to ensure they effectively achieve FEMA's mission in a manner that furthers the goals of advancing equity for all, including those in underserved communities; bolstering resilience from the impacts of climate change, particularly for those disproportionately impacted by climate change; and environmental justice.<sup>1</sup> FEMA held public meetings and extended the comment period on the RFI to ensure all interested parties had sufficient opportunity to provide comments.<sup>2</sup> All relevant comments received in response to the RFI, including those received during the public meetings, have been posted to the public rulemaking docket on the Federal eRulemaking portal at <https://www.regulations.gov/document/FEMA-2021-0011-0001/comment>. Commenters raised equitable concerns that FEMA will address in this IFR, such as by removing the requirement to apply for the SBA for a loan before receipt of

ONA, amending FEMA's habitability standards, increasing assistance for essential tools, simplifying its appeal process, and removing documentation requirements for late registrations. FEMA will seek public comment on this IFR and will carefully consider each comment received to determine whether further changes to FEMA's IHP regulations are needed.

In addition, FEMA will propose a regulation titled *Update of FEMA's Public Assistance Regulations*. FEMA proposes to revise its Public Assistance program regulations to reflect current statutory authorities and implement program improvements. The proposed rule would incorporate changes brought about by amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act. FEMA is also proposing clarifications and corrections to improve the efficiency and consistency of the Public Assistance program.

Additionally, FEMA will propose a regulation titled *Updates to Floodplain Management and Protection of Wetlands Regulations to Implement the Federal Flood Risk Management Standard* consistent with Executive Order 14030. FEMA proposes to amend its existing regulations to incorporate amendments that have been made to Executive Order 11988 and the Federal Flood Risk Management Standard (FFRMS). FEMA has engaged the public extensively on these matters. On February 5, 2015, FEMA, acting on behalf of the Mitigation Framework Leadership Group, posted a **Federal Register** notice seeking comments on a draft of the *Revised Guidelines for Implementing Executive Order 11988, Floodplain Management*.<sup>3</sup> The 60-day comment period was extended an additional 30 days.<sup>4</sup> During the public comment period for the Revised Guidelines, FEMA sent advisories to representatives from Governors' offices nationwide inviting comments on the draft Revised Guidelines. Over 25 meetings were held across the country with State, local, and Tribal officials and interested stakeholders to discuss the draft Revised Guidelines as well as 9 public listening sessions across the country attended by over 700 participants to facilitate feedback. All relevant comments received in response to these efforts have been posted to the public rulemaking docket on the Federal eRulemaking portal at <https://www.regulations.gov/document/FEMA-2015-0006-0001/comment>. Comments from meetings and listening sessions can be found at <https://www.regulations.gov/docket/FEMA-2015-0006/document>.

[www.regulations.gov/docket/FEMA-2015-0006/document](https://www.regulations.gov/docket/FEMA-2015-0006/document).

Additionally, FEMA published a Notice of Proposed Rulemaking (NPRM) in 2016<sup>5</sup> seeking public comment on FEMA's proposed implementation of the Revised Guidelines. All relevant comments received in response to the 2016 NPRM have been posted to the public rulemaking docket on the Federal eRulemaking portal at <https://www.regulations.gov/document/FEMA-2015-0006-0373/comment>. The FFRMS is a flexible framework allowing agencies to choose among three approaches to define the floodplain and corresponding flood elevation requirements for federally funded projects. Existing regulations describe FEMA's process for determining whether the proposed location for an action falls within a floodplain and how to complete the action in the floodplain in light of the risk of flooding. The proposed rule would change how FEMA defines a floodplain with respect to certain actions. Additionally, under the proposed rule, FEMA would use natural systems, ecosystem process, and nature-based approaches, where practicable, when developing alternatives to locating the proposed action in the floodplain.

Finally, FEMA continues to engage with the public related to its NFIP minimum floodplain management standards. On October 12, 2021, FEMA issued an RFI to receive the public's input on revising the NFIP's floodplain management standards for land management and use regulations to better align with the current understanding of flood risk and flood risk reduction approaches. FEMA's authority under the National Flood Insurance Act requires the agency to, from time to time, develop comprehensive criteria designed to encourage the adoption of adequate State and local measures. During the RFI comment period, FEMA held three public meetings and extended the comment period on the RFI to ensure all interested parties had sufficient opportunity to provide comments.<sup>6</sup> All relevant comments received in response to the RFI have been posted to the public rulemaking docket on the Federal eRulemaking portal at <https://www.regulations.gov/docket/FEMA-2021-0024/comments> and transcripts from the public meetings have also been posted at <https://www.regulations.gov/docket/FEMA-2021-0024/document>. In April 2023, FEMA requested recommendations from the Technical

<sup>1</sup> 86 FR 21325, Apr. 22, 2021.

<sup>2</sup> See "Request for Information on FEMA Programs, Regulations, and Policies; Public Meetings; Extension of Comment Period," 86 FR 30326, June 7, 2021.

<sup>3</sup> 80 FR 6530, Feb. 5, 2015.

<sup>4</sup> 80 FR 16018, Mar. 26, 2015.

<sup>5</sup> 81 FR 57401, Aug. 22, 2016.

<sup>6</sup> 86 FR 59745, Oct. 28, 2021 and 86 FR 66329, Nov. 22, 2021.

Mapping Advisory Council (TMAC) on modifying the definition of the Special Flood Hazard Area or modifying how it is calculated. In addition, FEMA requested a recommendation from TMAC on how FEMA might consider changing mapping procedures related to when land is filled. These recommendations will assist FEMA in exploring the feasibility of public comments received from the 2021 RFI.

The agency will propose regulations to better align the NFIP minimum floodplain management standards with FEMA's current understanding of flood risk, flood insurance premium rates, and risk reduction approaches to make communities safer, stronger, and more resilient to increased flooding. As part of the proposed regulations, FEMA is considering revisions to the NFIP minimum floodplain management standards to better protect people and property in a nuanced manner that balances community needs with the national scope of the NFIP. FEMA will also propose opportunities to make these minimum floodplain management standards improve resilience in historically underserved communities. The proposed revisions to the NFIP floodplain management minimum standards will consider how to advance the conservation of threatened and endangered species and their habitat. FEMA is also reviewing ways to further promote enhanced resilience efforts through the Community Rating System.

### **United States Citizenship and Immigration Services**

U.S. Citizenship and Immigration Services (USCIS) is the government agency that administers and oversees lawful immigration to the United States. USCIS is firmly committed to creating and strengthening an accessible and humane immigration system. The USCIS mission statement is: "USCIS upholds America's promise as a nation of welcome and possibility with fairness, integrity, and respect for all we serve." The American people, through Congress, have entrusted USCIS to faithfully administer the legal immigration programs that allow foreign nationals to visit, work, study, live, and seek refuge in the United States. Every day, USCIS delivers immigration decisions to individuals, families, businesses, workers, and those seeking a place of safety and shelter in our country, whether they filed applications, petitions, requests, or appeals. The work of USCIS employees makes the possibility of America a reality for immigrants, for the communities and economies they join, and for the nation as a whole. In

achieving this mission, partnership with our stakeholders and strong public engagement is a strategic priority of USCIS to ensure we are crafting policies and regulations to reduce unnecessary burdens or barriers to legal immigration, meet the economic needs of U.S. employers, and reinvigorate the size and scope of humanitarian relief. Over the coming year, USCIS will pursue several regulatory actions in support of furthering a strong legal immigration system that operates with integrity, and that promotes integration, inclusion, and citizenship. USCIS will issue regulations that restore and strengthen the family and employment-based immigration systems, that improve the lives of survivors of domestic and sexual violence and other serious crimes, and that are nimble enough to address urgent humanitarian needs effectively and quickly. We will publish regulations that are clear and easy to understand, and include opportunities for public engagement and input.

*Employment Issues, Economic Needs, and Lawful Pathways.* USCIS is focused on promulgating policies that are responsive to the needs of the U.S. economy and U.S. employers, while providing lawful pathways to work in the United States and also protecting the rights of both U.S. and noncitizen workers. USCIS has recently proposed a rule to modernize and reform the H-2A and H-2B programs. The proposed rule incorporates necessary program efficiencies, aims to meet the needs of U.S. employers, and include provisions designated to protect against the exploitation or other abuse of H-2A and H-2B workers (*Modernization and Reform of the H-2 Programs*). USCIS will also propose a rule to update and streamline the H-1B program, with a goal of improving program efficiency, integrity, and flexibility including proposed changes to the registration system to reduce the possibility of misuse and fraud.

Many of these proposals will be informed by the public comments we received in response to a Request for Public Input that USCIS published on April 19, 2021, to solicit feedback from our stakeholders and customers on identifying and reducing barriers to immigration (86 FR 20398). (*Modernizing H-1B Requirements and Oversight and Providing Flexibility in the F-1 Program*.)

*Improvements to the Overall Immigration System.* On January 4, 2023, USCIS published a proposal to adjust certain immigration and naturalization benefit request fees (after performing the required biennial fee review) to ensure that fees charged

recover full costs borne by USCIS. Following publication of the notice of proposed rulemaking and during the official comment period, on January 11, 2023, USCIS held a virtual listening session, "National Listening Session on the Proposed Rule to Adjust Certain Immigration Fees" (attended by 1,671 people), for members of the public to provide their feedback and thoughts. USCIS will consider all comments and input received from the public in developing the final rule and set fees in a manner that adheres to the ideals of removing unjustified barriers and promoting access to the immigration system (to promote, among other things, economic needs and economic growth); improving and expanding naturalization processing; and meeting the administration's humanitarian priorities. (*USCIS Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements*.) In addition, USCIS plans to take steps to reform the regulations governing the adjustment of status to lawful permanent residence to improve the efficiency and administration of that program. USCIS will propose a rule that updates outdated regulations, reduces the potential for visa retrogression, and promotes the efficient use of immediately available immigrant visas. Many of the proposed policy and operational changes contained in this rulemaking were informed by public comments USCIS received on its April 19, 2021 Request for Public Input and are crafted to reduce barriers to lawful immigration as identified by our stakeholders. (*Improving the Regulations Governing the Adjustment of Status to Lawful Permanent Residence and Related Immigration Benefits*.) Lastly, USCIS is also planning a proposed rule to clarify and update eligibility requirements governing citizenship and naturalization. This project is also informed by information submitted by our public stakeholders in response to the 2021 Request for Public Input, as well as a CIS Ombudsman's Webinar Series: Naturalization and Immigrant Integration on May 23, 2021 (attended by 635 people and 118 people provided written questions/comments) and a Citizenship and Naturalization Engagement on March 15, 2022 (attended by 463 people and 6 people submitted written questions/comments by email) in which the public provided comments on regulations and policies. USCIS reviewed all comments provided through the Request for Public Input and the engagements, and incorporated edits into the proposed rule as applicable. (*Citizenship and*



### *Naturalization and Other Related Flexibilities.)*

**Humanitarian Relief.** USCIS will propose reforms to the U nonimmigrant visa classification. The U nonimmigrant status is for noncitizen victims of certain qualifying criminal activities, and their eligible family members, who have been, are, or are likely to be helpful in the investigation or persecution of those crimes. To streamline the procedures and enhance operational efficiency, USCIS will propose a rule to update eligibility, procedural and filing requirements governing U nonimmigrant status, and adjustment of status for those nonimmigrants. (*Victims of Qualifying Criminal Activities; Eligibility Requirements for U Nonimmigrant Status and Adjustment of Status*).

**Asylum Reforms.** USCIS is focused on pursuing regulations to strengthen, rebuild, and (where appropriate) streamline the asylum system, consistent with law and mission imperatives. For example, USCIS and DOJ will take steps to remove regulatory provisions that are currently enjoined (*Procedures for Asylum and Bars to Asylum Eligibility*), propose updates to clarify eligibility for asylum and withholding of removal (*Clarifying Definitions and Analyses for Fair and Efficient Asylum and Other Protection Determinations*), and propose modifications or withdrawal of other asylum-related regulatory provisions (*Asylum Eligibility and Public Health*).

### **United States Coast Guard**

The Coast Guard is a military, multi-mission, maritime service of the United States and the only military organization within DHS. It is the principal Federal agency responsible for maritime safety, security, and stewardship in U.S. ports and waterways.

Effective governance in the maritime domain hinges upon an integrated approach to safety, security, and stewardship. The Coast Guard's policies and capabilities are integrated and interdependent, delivering results through a network of enduring partnerships with maritime stakeholders. Consistent standards of universal application and enforcement, which encourage safe, efficient, and responsible maritime commerce, are vital to the success of the maritime industry. The Coast Guard's ability to field versatile capabilities and highly trained personnel is one of the U.S. Government's most significant and important strengths in the maritime environment.

America is a maritime nation, and our security, resilience, and economic prosperity are intrinsically linked to the oceans. Safety, efficient waterways, and freedom of transit on the high seas are essential to our well-being. The Coast Guard is leaning forward, poised to meet the demands of the modern maritime environment. The Coast Guard creates value for the public through solid prevention and response efforts. Activities involving oversight and regulation, enforcement, maritime presence, and public and private partnership foster increased maritime safety, security, and stewardship.

The statutory responsibilities of the Coast Guard include ensuring marine safety and security, preserving maritime mobility, protecting the marine environment, enforcing U.S. laws and international treaties, and performing search and rescue. The Coast Guard supports the Department's overarching goals of mobilizing and organizing our Nation to secure the homeland from terrorist attacks, natural disasters, and other emergencies. These goals include protection against the risks associated with climate change, and the Coast Guard seeks to obtain scientific information to assist in that task, while also acting to promote resilience and adaptation.

In 33 CFR 1.05–15, each year since 1995 the Coast Guard has confirmed that it considers public participation essential to effective rulemaking. We encourage you to participate. It is Coast Guard policy to provide opportunities for you to participate early in potential rulemaking projects. Also, in our notices of proposed rulemaking, in addition to soliciting your written comments, we solicit requests for public meetings to provide you an opportunity for oral comment. We also seek recommendations from our ten Federal advisory committees and publish notices of those committee meetings should you want to attend. And our regulatory advisory group composed of senior Coast Guard officials, the Marine Safety and Security Council, has published the *Proceedings* magazine since the 1940s. Available online, the magazine informs the public about the subject matter of Coast Guard regulations, as well as the rulemaking process itself.

The Coast Guard highlights the following regulatory actions, which are in the proposed rule stage:

**Cybersecurity in the Marine Transportation System.** The Coast Guard is proposing to update its maritime security regulations by adding cybersecurity requirements to existing regulations. This proposed rulemaking

is part of an ongoing effort to address emerging cybersecurity risks and threats to maritime security by including additional security requirements to safeguard the marine transportation system.

**Shipping Safety Fairways Along the Atlantic Coast.** The Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) on June 19, 2020. We have considered comments on the ANPRM to develop a proposed rule that would establish shipping safety fairways along the Atlantic Coast of the United States. Fairways are marked routes for vessel traffic. They facilitate the direct and unobstructed transit of ships. The proposed fairways will be based on studies about vessel traffic along the Atlantic Coast for which we requested public comments.

**MARPOL Annex VI; Prevention of Air Pollution from Ships.** The Coast Guard is proposing regulations to carry out the provisions of Annex VI of the MARPOL Protocol, which is focused on the prevention of air pollution from ships. The Act to Prevent Pollution from Ships has already given direct effect to most provisions of Annex VI, and the Coast Guard and the Environmental Protection Agency have carried out some Annex VI provisions through previous rulemakings. This proposed rulemaking would fill gaps in the existing framework for carrying out the provisions of Annex VI. Chapter 4 of Annex VI contains shipboard energy efficiency measures that include short-term measures reducing carbon emissions linked to climate change. This proposed rulemaking would apply to U.S.-flagged ships. It would also apply to foreign-flagged ships operating either in U.S. navigable waters or in the U.S. Exclusive Economic Zone.

Regarding outreach in the development of this proposed rulemaking, in June 2018, the Coast Guard held a public workshop regarding Implementation of Regulation 14.1.3 of MARPOL Annex VI (Global 0.50% Sulfur Cap). In October 2011, we held a public meeting on the International Maritime Organization guidelines for exhaust gas cleaning systems for marine engines with respect to Regulations 4 and 14 of MARPOL Annex VI. And in December 2010, we requested comments regarding a study on Ship Emission Reduction Technology for cargo and passenger vessels, including what methods or equipment were then under development that might meet the MARPOL Annex VI requirements.

## United States Customs and Border Protection

Customs and Border Protection (CBP) is the Federal agency principally responsible for the security of our Nation's borders, both at and between the ports of entry into the United States. CBP must accomplish its border security and enforcement mission without stifling the flow of legitimate trade and travel. The primary mission of CBP is its homeland security mission, that is, to prevent terrorists and terrorist weapons from entering the United States. An important aspect of this mission involves improving security at our borders and ports of entry, but it also means extending our zone of security beyond our physical borders.

CBP is also responsible for administering laws concerning the importation of goods into the United States and enforcing the laws concerning the entry of persons into the United States. This includes regulating and facilitating international trade; collecting import duties; enforcing U.S. trade, immigration and other laws of the United States at our borders; inspecting imports; overseeing the activities of persons and businesses engaged in importing; enforcing the laws concerning smuggling and trafficking in contraband; apprehending individuals attempting to enter the United States illegally; protecting our agriculture and economic interests from harmful pests and diseases; servicing all people, vehicles, and cargo entering the United States; maintaining export controls; and protecting U.S. businesses from theft of their intellectual property.

In carrying out its mission, CBP's goal is to facilitate the processing of legitimate trade and people efficiently without compromising security, and public input is an important tool in meeting this goal. CBP regularly seeks input from Federal Advisory Committees, issues formal Requests for Information, and holds listening sessions and symposia, including those on forced labor, green trade, and the 21st Century Customs Framework. However, some of CBP's rules further law enforcement purposes and are therefore not ripe for robust public outreach prior to their issuance. CBP's public Newsroom, with details on upcoming public engagements, is available at: <https://www.cbp.gov/newsroom>.

Consistent with its primary mission of homeland security, CBP intends to issue several regulations that are intended to improve security at our borders and ports of entry. During the upcoming year, CBP will also work on various

projects to streamline CBP processing, reduce duplicative processes, reduce various burdens on the public, and automate various paper forms. CBP highlights one of those projects below.

*Advance Passenger Information System: Electronic Validation of Travel Documents.* CBP intends to amend current Advance Passenger Information System (APIS) regulations to incorporate additional carrier requirements that would further enable CBP to determine whether each passenger is traveling with valid, authentic travel documents prior to the passenger boarding the aircraft. The proposed regulation would require commercial air carriers to receive a second message from CBP that would state whether CBP matched the travel documents of each passenger to a valid, authentic travel document recorded in CBP's databases. The proposed regulation would also require air carriers to transmit additional data elements regarding contact information through APIS for all commercial aircraft passengers arriving in the United States to support border operations and national security. CBP expects that the collection of these elements would enable CBP to further support the Center for Disease Control and Prevention's mission in monitoring and tracing the contacts for persons involved in health incidents. This action will result in time savings to passengers and cost savings to CBP, carriers, and the public.

In addition to the regulations that CBP issues to promote DHS's mission, CBP issues regulations related to the mission of the Department of the Treasury. Under section 403(1) of the Homeland Security Act of 2002, the former-U.S. Customs Service, including functions of the Secretary of the Treasury relating thereto, transferred to the Secretary of Homeland Security. As part of the initial organization of DHS, the Customs Service inspection and trade functions were combined with the immigration and agricultural inspection functions and the Border Patrol and transferred into CBP. The Department of the Treasury retained certain regulatory authority of the U.S. Customs Service relating to customs revenue function. In the coming year, CBP expects to continue to issue regulatory documents that will facilitate legitimate trade and implement trade benefit programs. For a discussion of CBP regulations regarding the customs revenue function, see the regulatory plan of the Department of the Treasury.

## Transportation Security Administration

The Transportation Security Administration (TSA) protects the

Nation's transportation systems to ensure freedom of movement for people and commerce. TSA applies an intelligence-driven, risk-based approach to all aspects of its mission. This approach results in layers of security to mitigate risks effectively and efficiently. In fiscal year 2024, TSA is prioritizing the following actions. In general, TSA has prioritized actions that are required to meet statutory mandates and, that are necessary for national security, and that are consistent with the goals of Executive Order 14058, Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government.

Consistent with Executive Order 14094, Modernizing Regulatory Review, TSA endeavors, as practicable and appropriate, to proactively engage parties that are interested in or affected by TSA rulemaking. With respect to the actions described below, TSA has used a range of measures to engage the public, including advance notices of proposed rulemakings, public meetings, and advisory committees.

*Enhancing Surface Cyber Risk Management.* On January 28, 2021, the President issued the National Security Memorandum on Improving Cybersecurity for Critical Infrastructure Controls Systems. Consistent with this priority of the Administration and in response to the ongoing cybersecurity threat to pipeline systems, TSA used its authority under 49 U.S.C. 114 to issue security directives to owners and operators of TSA-designated critical pipelines that transport hazardous liquids and natural gas to implement a number of urgently needed protections against cyber intrusions. The first directive, issued in May 2021, requires critical pipeline owner/operators to (a) report confirmed and potential cybersecurity incidents to DHS's Department of Cybersecurity and Infrastructure Security Agency (CISA); (b) designate a Cybersecurity Coordinator to be available 24 hours a day, seven days a week; (3) review current cybersecurity practices; and (4) identify any gaps and related remediation measures to address cyber-related risks and report the results to TSA and CISA within 30 days of issuance of the SD. A second security directive, first issued in July 2021, requires these owners and operators to (1) implement specific mitigation measures to protect against ransomware attacks and other known threats to information technology and operational technology systems; (2) develop and implement a cybersecurity contingency and recovery plan; and (3) conduct a cybersecurity architecture design

review. TSA updated the second directive to require owners/operators to achieve critical security outcomes through performance-based measures. In December 2021 and October 2022, TSA imposed similar requirements on certain rail operations to address emerging threats. TSA is committed to enhancing and sustaining cybersecurity for all modes of transportation and intends to issue a rulemaking that may codify these and other requirements following an opportunity for notice and comment. TSA published an advance notice of proposed rulemaking on this topic in November 2022.

**Flight Training Security Program.** Through an interim final rule, TSA created a new part 1552, Flight Schools, in title 49 of the Code of Federal Regulations (CFR). The IFR requires flight schools to notify TSA when noncitizens, and other individuals designated by TSA, apply for flight training or recurrent training. TSA subsequently issued exemptions and interpretations in response to comments on the IFR, questions raised during operation of the program since 2004, and a notice extending the comment period on May 18, 2018. Based on the comments and questions received, TSA is finalizing the rule with modifications that may include changing the frequency of security threat assessments from a high-frequency event-based interval to a time-based interval, clarify the definitions and other provisions of the rule, and enable industry to use TSA-provided electronic recordkeeping systems for all documents required to demonstrate compliance with the rule. These and other changes will provide significant cost-savings to the industry and individuals seeking flight training while also enhancing security.

**REAL ID Applicability to Mobile Driver's Licenses.** TSA will issue a final rule to amend the REAL ID regulation to address mobile driver's licenses (mDL). The REAL ID Act of 2005 and DHS implementing regulation set minimum requirements for state-issued driver's licenses and identification cards accepted by Federal agencies for official purposes, which include accessing Federal facilities, boarding federally regulated commercial aircraft, entering nuclear power plants, and any other purposes that the Secretary shall determine. The REAL ID Modernization Act (December 2020) clarifies that the REAL ID Act applies to mobile or digital driver's licenses that have been issued in accordance with regulations prescribed by DHS. This final rule will amend 6 CFR part 37 to set the minimum technical requirements and security standards for mDLs to enable

Federal agencies to accept mDLs for official purposes, to establish a process that states must follow to apply for a mDL waiver from the REAL ID regulations. This rulemaking would also enable federal agencies to accept state mDLs for official purposes from states who are issued such a waiver under this final rule.

**Frequency of Renewal Cycle for Indirect Air Carrier Security Programs.** TSA's regulations for Indirect Air Carriers (IACs) in 49 CFR part 1548 currently require annual renewal of an IAC's security program and prompt notification to TSA of any changes to operations-related to information previously provided to TSA. Through this rulemaking, TSA will modify the regulation to allow for a three-year renewal schedule, rather than annual renewal. This change will align the security program renewal requirement with those applicable to other regulated entities within the air cargo industry.

#### **United States Immigration and Customs Enforcement**

U.S. Immigration and Customs Enforcement (ICE) is the principal criminal investigative arm of DHS and one of the three Department components charged with the criminal and civil enforcement of the Nation's immigration laws. Its primary mission is to protect national security, public safety, and the integrity of our borders through the criminal and civil enforcement of Federal law governing border control, customs, trade, and immigration. In carrying out this mission and consistent with Executive Order 14058 on Transforming Federal Customer Experience And Service Delivery To Rebuild Trust In Government ICE is committed to providing opportunities for the public to engage in the improvement of our programs, processes, and services. For example, on October 26, 2021, DHS published a notice in the **Federal Register** titled Remote Document Examination for Form I-9, Employment Eligibility Verification: Request for Public Input, (<https://www.govinfo.gov/content/pkg/FR-2021-10-26/pdf/2021-23260.pdf>) seeking comments from the public regarding document examination practices associated with Form I-9. ICE carefully considered this input resulting in a final rule and procedure that incorporates commenters suggestions. During the coming fiscal year, ICE will focus rulemaking efforts on regulations pertaining to processing improvements, including the rules mentioned below.

**Clarifying and Revising Custody Determination Procedures for Noncitizens Subject to Discretionary**

**Detention (INA 236(a)/8 U.S.C. 1226 detention).** The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) and the Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) (collectively, the Departments) are planning to amend the regulations that govern detention and release determinations for noncitizens subject to the custody provisions in section 236 of the Immigration and Nationality Act (Act), 8 U.S.C. 1226(a). The goal of the proposed regulation would be to clarify the scope and applicability of section 236(a) of the Act, 8 U.S.C. 1226(a), and the procedures that apply under that section, including the burden and standard of proof for continued detention at initial custody determinations and any custody redetermination hearings, and related issues. This rulemaking is consistent with Executive Order 14058, which directs agencies to take actions that improve service delivery and customer experience by decreasing administrative burdens, enhancing transparency, and improving the efficiency and effectiveness of government.

#### **Cybersecurity and Infrastructure Security Agency**

The Cybersecurity and Infrastructure Security Agency (CISA) is responsible for leading the national effort to develop cybersecurity and critical infrastructure security programs, operations, and associated policy to enhance the security and resilience of physical and cyber infrastructure.

**Ammonium Nitrate Security Program.** This rule implements a 2007 amendment to the Homeland Security Act. The amendment requires DHS to "regulate the sale and transfer of ammonium nitrate facility . . . to prevent the misappropriation or use of ammonium nitrate in an act of terrorism." CISA published a Notice of Proposed Rulemaking in 2011. CISA is planning to issue a Supplemental Notice of Proposed Rulemaking.

**Chemical Facility Anti-Terrorism Standards (CFATS).** This rule would update CFATS' Risk Based Performance Standards to enhance cybersecurity requirements, modify the counting rules associated with release-flammable chemicals, remove release-explosive chemicals, and adjust the Screening Threshold Quantities of Appendix A to account for the updated risk analysis methodology. CISA previously invited public comment on an Advance Notice of Proposed Rulemaking (ANPRM) during August 2014 for potential revisions to the CFATS regulations. The

ANPRM provided an opportunity for the public to provide recommendations for possible program changes. In June 2020, CISA published for public comment a retrospective analysis of the CFATS program. And in January 2021, CISA invited additional public comment through an ANPRM concerning the removal of certain explosive chemicals from CFATS. CISA intends to address many of the subjects raised in both ANPRMs and the retrospective analysis in this regulatory action, including potential updates to CFATS cybersecurity requirements and Appendix A to the CFATS regulations. CISA is planning to issue a notice of proposed rulemaking.

*Cybersecurity Incident Reporting for Critical Infrastructure Act Regulations.* CISA will propose regulations to implement certain aspects of the Cybersecurity Incident Reporting for Critical Infrastructure Act of 2022 (CIRCA). Specifically, CIRCA directs CISA to develop and implement regulations requiring covered entities to submit reports to CISA regarding covered cyber incidents and ransom payments. CIRCA requires CISA to publish a Notice of Proposed Rulemaking (NPRM) within 24 months of the date of enactment of CIRCA as part of the process for developing these regulations. CISA previously issued a Request for Information on September 12, 2022, and held a series of listening sessions seeking public input on potential aspects of the proposed regulation prior to publication of the NPRM. CISA is planning to issue a Notice of Proposed Rulemaking.

A more detailed description of the priority regulations that comprise the DHS regulatory plan follows.

## DHS—U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS)

### Proposed Rule Stage

#### 85. Victims of Qualifying Criminal Activities; Eligibility Requirements for U Nonimmigrant Status and Adjustment of Status [1615-AA67]

*Priority:* Other Significant.

*Legal Authority:* 5 U.S.C. 552; 5 U.S.C. 552a; 8 U.S.C. 1101; 8 U.S.C. 1101 (note); 8 U.S.C. 1102; Pub. L. 113–4

*CFR Citation:* 8 CFR 214; 8 CFR 274a; 8 CFR 103; 8 CFR 299.

*Legal Deadline:* None.

*Abstract:* This proposed rule would clarify and update eligibility, procedural, and filing requirements for U nonimmigrant status (commonly known as the “U” visa) and adjustment of status for U nonimmigrants. U

nonimmigrant status is for noncitizen victims of certain qualifying criminal activities who have been, are being, or are likely to be helpful in the investigation or prosecution of those crimes and eligible family members. There is a statutory limit of 10,000 U visas per year for principal petitioners. DHS published an interim final rule in 2007 (72 FR 53013) to establish the procedures to be followed in order to petition for U nonimmigrant status and published an interim final rule in 2008 (73 FR 75540) to establish the procedures for applying for adjustment of status as a U nonimmigrant. This rule would address relevant comments and feedback from stakeholders since publication of those interim final rules, as well as update the regulations for changes in legislation.

*Statement of Need:* This U classification allows noncitizen victims of certain crimes to petition for U nonimmigrant status and to adjust status to that of a lawful permanent resident. Noncitizen victims of certain qualifying criminal activities who have been, are being, or are likely to be helpful in the investigation or prosecution of those crimes are eligible to petition for U nonimmigrant status. This rule would address the eligibility requirements that must be met for classification as a U nonimmigrant and implements statutory amendments to these requirements, streamlines the procedures to petition for U nonimmigrant status, provides evidentiary guidance to assist in the petition process, and clarifies adjustment of status requirements.

*Summary of Legal Basis:* Section 101(a)(15) of the INA, 8 U.S.C. 1101(a)(15) establishes classifications for noncitizens who are coming temporarily to the United States as nonimmigrants, including the U nonimmigrant classification. Section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), authorizes the Secretary to prescribe, by regulation, the terms and conditions of the admission of nonimmigrants, including U nonimmigrants. Section 214(p) of the INA, 8 U.S.C. 1184(p), sets forth certain procedural and substantive requirements for the U nonimmigrant classification, including employment authorization for U nonimmigrants incident to status and discretionary employment authorization for those with pending, bona fide U nonimmigrant visa petitions. Section 274A of the INA, 8 U.S.C. 1324a, recognizes the Secretary’s authority to extend employment authorization to noncitizens in the United States.

*Anticipated Cost and Benefits:* DHS is currently considering the specific impacts of the proposed provisions.

### Timetable:

Action	Date	FR Cite
Interim Final Rule	09/17/07	72 FR 53013
Interim Final Rule Effective.	10/17/07	
Interim Final Rule Comment Period End.	11/17/07	
NPRM .....	02/00/24	

### Regulatory Flexibility Analysis

*Required:* No.

*Small Entities Affected:* No.

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

*Additional Information:* Transferred from RIN 1115–AG39.

*URL For More Information:* <https://www.regulations.gov>.

*URL For Public Comments:* <https://www.regulations.gov>.

*Agency Contact:* Rena Cutlip-Mason, Chief, Division of Humanitarian Affairs, OP&S, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Camp Springs, MD 20746, Phone: 240 721–3000.

*RIN:* 1615–AA67

## DHS—USCIS

### 86. Improving the Regulations Governing the Adjustment of Status to Lawful Permanent Residence and Related Immigration Benefits [1615-AC22]

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

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 8 U.S.C. 1101; 8 U.S.C. 1103(a); 8 U.S.C. 1153 to 1155; 8 U.S.C. 1159 and 1160; 8 U.S.C. 1254a; 8 U.S.C. 1255; 8 U.S.C. 1257; 8 U.S.C. 1324a; 8 U.S.C. 1184; . . .

*CFR Citation:* 8 CFR 204.5; 8 CFR 204.12; 8 CFR 205.1; 8 CFR 209.1; 8 CFR 209.2; 8 CFR 244.15; 8 CFR 245.1; 8 CFR 245.2; 8 CFR 245.5; 8 CFR 245.11; 8 CFR 245.15; 8 CFR 245.18; 8 CFR 249.2; 8 CFR 264.2; 8 CFR 274a.12; . . .

*Legal Deadline:* None.

*Abstract:* The Department of Homeland Security (DHS) proposes to amend its regulations governing adjustment of status to lawful permanent residence in the United States. The proposed changes include permitting concurrent filing of a visa petition and the application for adjustment of status for the employment-based 4th preference (certain special immigrants) category, including religious workers; permitting the transfer of underlying basis of a

pending adjustment of status application; amending the definition relating to ineligibilities under section 245(c) of the INA; clarifying when a visa becomes available for purposes of the age calculation under the Child Status Protection Act; and authorizing compelling circumstances employment authorization for certain derivative beneficiaries waiting for immigrant visa availability. DHS also proposes to amend the regulations relating to temporary protected status and travel authorization and clarify the impact on the adjustment of status eligibility. The intent of these proposed changes is to reduce processing times, improve the quality of inventory data provided to partner agencies, reduce the potential for visa retrogression, and promote the efficient use of immediately available immigrant visas.

**Statement of Need:** This rulemaking is necessary to address outdated regulations to improve efficiency and the administration of the adjustment of status of immigrants to lawful permanent residence in the United States, improve the quality of inventory data that DHS provides to agencies, reduce the potential for visa retrogression, and promote the efficient use of immediately available immigrant visas. This rule also changes eligibility requirements for certain classifications for what constitutes compelling circumstances for employment authorization.

**Summary of Legal Basis:** The DHS's authority for the regulatory amendments proposed are found in various sections of the Immigration and Nationality Act (INA), codified at title 8 of the United States Code, and the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135 (Nov. 25, 2002), codified at 6 U.S.C. 101 *et seq.* Specifically, 6 U.S.C. 112, and 8 U.S.C. 1103, charge DHS with the administration and enforcement of the immigration laws of the United States, and 8 U.S.C. 1103(a) authorizes DHS to establish such regulations, prescribe such forms of bond, reports, entries, and other papers; issue instructions; and perform such other acts deemed necessary for carrying out the Secretary's authority under the provisions of the INA, including for the provisions related to immigrant visa petitions (8 U.S.C. 1153 to 1155); Adjustment of status of refugees (8 U.S.C. 1159); Special Agricultural Workers (8 U.S.C. 1160); Admission of nonimmigrants (8 U.S.C. 1184); Temporary Protected Status (8 U.S.C. 1254a); Adjustment of status of nonimmigrant to that of person admitted for permanent residence (8 U.S.C. 1255); Adjustment of status of

certain resident aliens to nonimmigrant status; exceptions (8 U.S.C. 1157); Work Authorization (8 U.S.C. 1324a).

**Anticipated Cost and Benefits:** DHS is currently considering the specific impacts of the proposed provisions.

**Timetable:**

Action	Date	FR Cite
NPRM .....	03/00/24	

**Regulatory Flexibility Analysis Required:** Undetermined.

**Government Levels Affected:** Undetermined.

**Federalism:** Undetermined.

**Agency Contact:** Mark Phillips, Residence and Naturalization Division Chief, Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Policy and Strategy, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588–0009, Phone: 240 721–3000.

**RIN:** 1615–AC22

## DHS—USCIS

### 87. Asylum Eligibility and Public Health [1615–AC57]

**Priority:** Other Significant.

**Legal Authority:** Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. 104–208, 110 Stat. 3009, sec. 604(a) (codified at INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C)); INA 241(b)(3)(B), 8 U.S.C. 1231(b)(3)(B); Foreign Affairs Reform and Restructuring Act (“FARRA”), Pub. L. 105–277, 112 Stat. 2681–822, sec. 2242 (1998); INA 235(b), 8 U.S.C. 1225(b)

**CFR Citation:** 8 CFR 208; 8 CFR 1208.

**Legal Deadline:** None.

**Abstract:** On December 23, 2020, DHS and the DOJ (collectively, the Departments) published a final rule entitled Security Bars and Processing to clarify that the danger to the security of the United States statutory bar to eligibility for asylum and withholding of removal encompasses certain emergency public health concerns and make certain other changes. As of December 28, 2022, the rule's effective date was delayed until December 31, 2024. The Departments plan to propose modification or withdrawal of the December 23, 2020, rule.

**Statement of Need:** The Departments are reviewing and reconsidering whether the Security Bars and Processing final rule is consistent with the goals of ensuring the safe and orderly reception and processing of asylum seekers consistent with public health and safety, with the additional

context of the complex relationship between the Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review final rule (RINs 1125–AA94 and 1615–AC42) and the Security Bars and Processing final rule. The Departments are reevaluating whether the Security Bars and Processing rule provides the most appropriate and effective framework for achieving its goals of mitigating the spread of communicable diseases, including COVID–19, among certain noncitizens in the credible fear screening process, as well as DHS personnel and the public. Based on such reconsideration, the Departments will propose to modify or withdraw the Security Bars rule.

**Anticipated Cost and Benefits:** DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

**Timetable:**

Action	Date	FR Cite
NPRM .....	07/09/20	85 FR 41201
NPRM Comment Period End.	08/10/20	
Final Action .....	12/23/20	85 FR 84160
Final Action Effective.	01/22/21	
Final Rule; Delay of Effective Date.	01/25/21	86 FR 6847
Final Rule; Effective Date Delayed Until.	03/22/21	
Interim Final Rule; Delay of Effective Date.	03/22/21	86 FR 15069
Interim Final Rule Comment Period End.	04/21/21	
Interim Final Rule Effective Date Delayed Until.	12/31/21	
Interim Final Rule; Delay of Effective Date.	12/28/21	86 FR 73615
Interim Final Rule Comment Period End.	02/28/22	
Interim Final Rule Effective Date Delayed Until.	12/31/22	
Interim Final Rule; Delay of Effective Date.	12/28/22	87 FR 79789
Interim Final Rule Comment Period End.	02/27/23	
Interim Final Rule Effective Date Delayed Until.	12/31/24	
NPRM .....	11/00/23	

**Regulatory Flexibility Analysis**

**Required:** No.

**Government Levels Affected:** None.

**URL For More Information:** <https://www.regulations.gov>.

URL For Public Comments: <https://www.regulations.gov>.

*Agency Contact:* Rená Cutlip-Mason, Chief, Division of Humanitarian Affairs, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Camp Springs, MD 20746, Phone: 240 721–3000.

*Related RIN:* Related to 1125–AB08, Related to 1615–AC69  
*RIN:* 1615–AC57

## DHS—USCIS

### 88. Clarifying Definitions and Analyses for Fair and Efficient Asylum and Other Protection Determinations [1615–AC65]

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

*Unfunded Mandates:* Undetermined.  
*Legal Authority:* 8 U.S.C. 1101(a)(42); 8 U.S.C. 1158; 8 U.S.C. 1225; 8 U.S.C. 1231 and 1231 (note); E.O. 14010; 86 FR 8267 (Feb. 2, 2021)

*CFR Citation:* 8 CFR 207; 8 CFR 208; 8 CFR 235; 8 CFR 244; 8 CFR 1003; 8 CFR 1208; 8 CFR 1212; 8 CFR 1235; 8 CFR 1244.

*Legal Deadline:* None.

*Abstract:* This rule proposes to amend Department of Homeland Security (DHS) and Department of Justice (DOJ) (collectively, “the Departments”) regulations that govern eligibility for asylum and withholding of removal. The amendments focus on portions of the regulations that deal with the definitions of membership in a particular social group and the interpretation of various other elements of eligibility for asylum, including some that are often determinative in particular social group claims, such as the requirements for failure of State protection, and determinations about whether persecution is on account of a protected ground. The rule will also propose to republish, modify, or rescind portions of the Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review final rule (RINs 1125–AA94 and 1615–AC42). This rule is consistent with Executive Order 14010 of February 2, 2021, which directs the Departments to promulgate joint regulations, consistent with applicable law, addressing the circumstances in which a person should be considered a member of a particular social group.

*Statement of Need:* The Departments propose this rule to clarify standards governing numerous elements of eligibility for asylum, withholding of removal under section 241(b)(3) of the

Immigration and Nationality Act, and protection from removal under the regulations that implement U.S. obligations in immigration cases under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

*Anticipated Cost and Benefits:* DHS is currently considering the specific cost and benefit impacts of the proposed provisions.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/24	

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* Undetermined.

*Federalism:* Undetermined.

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

*Agency Contact:* Rena Cutlip-Mason, Chief, Division of Humanitarian Affairs, OP&S, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Camp Springs, MD 20746, Phone: 240 721–3000.

*Related RIN:* Related to 1615–AC42, Related to 1125–AB13, Related to 1125–AA94

*RIN:* 1615–AC65

## DHS—USCIS

### 89. Procedures for Asylum and Bars to Asylum Eligibility [1615–AC69]

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

*Legal Authority:* Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135, sec. 1102, as amended; 8 U.S.C. 1103(a)(1); 8 U.S.C. 1103(a)(3); 8 U.S.C. 1103(g); 8 U.S.C. 1225(b); 8 U.S.C. 1231(b)(3) and 1231 (note); 8 U.S.C. 1158

*CFR Citation:* 8 CFR 208; 8 CFR 235; 8 CFR 1003; 8 CFR 1208; 8 CFR 1235.

*Legal Deadline:* None.

*Abstract:* In 2020, the Department of Homeland Security and Department of Justice (collectively, the Departments) published a final rule amending their respective regulations governing bars to asylum eligibility and procedures: Procedures for Asylum and Bars to Asylum Eligibility (RINs 1125–AA87 and 1615–AC41), 85 FR 67202 (Oct. 21, 2020). The Departments will propose to modify or rescind the regulatory

changes promulgated in this final rule consistent with Executive Order 14010 (Feb. 2, 2021).

*Statement of Need:* The Departments are reviewing this regulation in light of the issuance of Executive Order 14010 and Executive Order 14012. This rule is needed to restore and strengthen the asylum system and to address inconsistencies with the goals and principles outlined in Executive Order 14010 and Executive Order 14012.

*Anticipated Cost and Benefits:* The Departments are currently considering the specific cost and benefit impacts of the proposed provisions.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/24	

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* None.

*Agency Contact:* Rena Cutlip-Mason, Chief, Division of Humanitarian Affairs, OP&S, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Camp Springs, MD 20746, Phone: 240 721–3000.

*Related RIN:* Related to 1125–AA87, Split from 1615–AC41, Related to 1125–AB12

*RIN:* 1615–AC69

## DHS—USCIS

### 90. Modernizing H–1B Requirements and Oversight, Providing Flexibility in the F–1 Program, and Program Improvements Affecting Other Nonimmigrant Workers [1615–AC70]

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

*Legal Authority:* 6 U.S.C. 101, 112 and 202; 8 U.S.C. 1101(a)(15)(F) and (H)(i)(b), 1103(a), 1184(a), 1184(c), 1184(i) and 1357(b); . . .

*CFR Citation:* 8 CFR 214.2.

*Legal Deadline:* None.

*Abstract:* The Department of Homeland Security (DHS) is proposing to amend its regulations governing H–1B specialty occupation workers and F–1 students who are the beneficiaries of timely filed H–1B cap-subject petitions. Specifically, DHS proposes to revise the regulations relating to “specialty occupation” and the “employer-employee relationship”; provide flexibility for start-up entrepreneurs; implement new requirements and guidelines for H–1B site visits; provide flexibility on the employment start date listed on the petition (in limited circumstances); address “cap-gap”

issues; bolster the H-1B registration process to reduce the possibility of misuse and fraud in the H-1B registration system; modernize cap exemptions; clarify the requirement that an amended or new petition be filed where there are material changes; and codify USCIS' deference policy and requirement of maintenance of status for all employment-based nonimmigrant classifications that use Form I-129, among other provisions.

*Statement of Need:* These proposed changes are needed to modernize and streamline the requirements of the H-1B program, improve program efficiency and integrity measures, and provide greater benefits and flexibilities for petitioners and beneficiaries.

*Summary of Legal Basis:* The Secretary of Homeland Security's authority for these proposed regulatory amendments is found in various sections of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. 1101 *et seq.*, and the Homeland Security Act of 2002 (HSA), Public Law 107-296, 116 Stat. 2135, 6 U.S.C. 101 *et seq.* General authority for issuing this rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws, as well as section 112 of the HSA, 6 U.S.C. 112, which vests all of the functions of DHS in the Secretary and authorizes the Secretary to issue regulations. Section 101(a)(15) of the INA, 8 U.S.C. 1101(a)(15) establishes classifications for noncitizens who are coming temporarily to the United States as nonimmigrants. Section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), authorizes the Secretary to prescribe, by regulation, the terms and conditions of the admission of nonimmigrants. Section 214(c) of the INA, 8 U.S.C. 1184(c) authorizes the Secretary to prescribe how an importing employer may petition for nonimmigrant workers, the information that an importing employer must provide in the petition; and certain fees that are required for certain nonimmigrant petitions. Section 214(g) of the INA, 8 U.S.C. 1184(g), prescribes the H-1B numerical limitations, various exceptions to those limitations, and the period of authorized admission for H-1B nonimmigrants. Section 214(i) of the INA, 8 U.S.C. 1184(i), sets forth the definition and requirements of a specialty occupation. Section 248 of the INA, 8 U.S.C. 1258, authorizes a noncitizen to change from any nonimmigrant classification (subject to certain exceptions) to any other nonimmigrant classification if the noncitizen was lawfully admitted to the United States as a nonimmigrant and is

continuing to maintain that status and is not otherwise subject to the 3- or 10-year bar applicable to certain noncitizens who were unlawfully present in the United States. Section 274A of the INA, 8 U.S.C. 1324a, recognizes the Secretary's authority to extend employment authorization to noncitizens in the United States. Finally, section 287(b) of the INA, 8 U.S.C. 1357(b), authorizes the taking and consideration of evidence concerning any matter that is material or relevant to the enforcement of the INA.

*Anticipated Cost and Benefits:* DHS is currently considering the specific impacts of the proposed provisions.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses.  
*Government Levels Affected:* None.  
*Agency Contact:* Charles Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588-0009, Phone: 240 721-3000.  
*RIN:* 1615-AC70

DHS-USCIS

91. Modernizing H-2 Program Requirements, Oversight, and Worker Protections [1615-AC76]

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

*Legal Authority:* 8 U.S.C. 1103(a)(3); 8 U.S.C. 1001(a)(15)(H)(ii)(a) and (b); 8 U.S.C. 1184(a), (c) and (g); 8 U.S.C. 1324a

*CFR Citation:* 8 CFR 214; 8 CFR 274a.  
*Legal Deadline:* None.

*Abstract:* On September 20, 2023, DHS published a notice of proposed rulemaking (NPRM) in which proposed several changes to modernize and reform the H-2A and H-2B nonimmigrant worker programs. Specifically, the NPRM incorporates new policies that if finalized would produce program efficiencies, address current aspects of the program that may have unintentionally resulted in exploitation or other abuse of persons seeking to come to this country as H-2A and H-2B workers, builds upon existing protections against prohibited payments or other assessment of fees and/or salary deductions by H-2A and

H-2B employers in connection with recruitment and/or H-2 employment, and otherwise adds protections for workers. DHS has not proposed any changes that would revise the temporary labor certification process or the regulations contained in 20 CFR part 655 or 29 CFR part 501 and 503. The public comment period closes November 20, 2023, and DHS will review the comments received during the comment period and in accordance with the instructions contained in the NPRM before issuing any future final rule.

*Statement of Need:* This rulemaking is needed to enhance protections for workers and better ensure the integrity of the H-2A and H-2B programs. In addition, this proposed rule is necessary to improve H-2 program efficiencies and remove certain barriers to program access.

*Summary of Legal Basis:* The Immigration and Nationality Act (INA) charges the Secretary of Homeland Security with the administration and enforcement of the immigration laws and provides that the Secretary shall establish such regulations and perform such other acts as he deems necessary for carrying out his authority under the INA. See INA section 103(a)(1),(3), 8 U.S.C. 1103(a)(1), (3). In addition, the Homeland Security Act of 2002 charges the Secretary with establishing and administering rules governing the granting of visas or other forms of permission to enter the United States to individuals who are not a citizen, or an alien lawfully admitted for permanent residence in the United States. See Public Law 107-296, 116 Stat. 2135, 6 U.S.C. 202(4). Congress established the H-2A and H-2B nonimmigrant classifications in INA section 101(a)(15)(H)(ii)(a) and (b), 8 U.S.C. 1101(a)(15)(H)(ii)(a) and (b). With respect to nonimmigrants in particular, the INA provides that the admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Secretary may by regulations prescribe. See INA section 214(a)(1), 8 U.S.C. 1184(a)(1). The INA also tasks DHS with approving petitions filed by the importing employers of nonimmigrants, including those in the H nonimmigrant visa classification, before a nonimmigrant visa may be granted. See INA section 214(c)(1), 8 U.S.C. 1184(c)(1).

*Anticipated Cost and Benefits:* In the published proposed rule, DHS estimates annualized costs of rule range from \$1,998,572 to \$2,668,028 at a 3-percent discount rate and \$2,186,033 to \$2,915,885 at a 7-percent discount rate.



In addition, the total annualized transfers (from consumers to a limited number of H-2A and H-2B workers) amount to \$2,918,958 in additional earnings at the 3-percent and 7-percent discount rate and related total tax transfers of \$337,122. Fees paid for Form I-129 and premium processing as a result of the proposed rule's portability provision constitute a transfer of \$636,760 from petitioners to USCIS (3 and 7-percent annualized equivalent).

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/20/23	88 FR 65040
NPRM Comment Period End.	11/20/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*URL For More Information:* <https://www.regulations.gov>.

*URL For Public Comments:* <https://www.regulations.gov>.

*Agency Contact:* Charles Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588-0009, Phone: 240 721-3000.

*RIN:* 1615-AC76

## DHS—USCIS

### 92. Citizenship and Naturalization and Other Related Flexibilities [1615-AC80]

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

*Legal Authority:* sec. 102 of the Homeland Security Act of 2002; 6 U.S.C. 112(a)(3); 8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1151; 8 U.S.C. 1153; 8 U.S.C. 1154; 8 U.S.C. 1159; 8 U.S.C. 1182; 8 U.S.C. 1255; 8 U.S.C. 1401; 8 U.S.C. 1409; 8 U.S.C. 1421; 8 U.S.C. 1423; 8 U.S.C. 1427; 8 U.S.C. 1429 to 1431; 8 U.S.C. 1433; 8 U.S.C. 1435; 8 U.S.C. 1438 to 1440; 8 U.S.C. 1443; 8 U.S.C. 1445 to 1449; 8 U.S.C. 1452; 8 U.S.C. 1454; 8 U.S.C. 1481

*CFR Citation:* 8 CFR 1.2; 8 CFR 103; 8 CFR 106; 8 CFR 204; 8 CFR 209; 8 CFR 245; 8 CFR 300; 8 CFR 306; 8 CFR 312; 8 CFR 316; 8 CFR 318; 8 CFR 319; 8 CFR 320; 8 CFR 322; 8 CFR 324; 8 CFR 329; 8 CFR 333; 8 CFR 334; 8 CFR 335; 8 CFR 336; 8 CFR 337; 8 CFR 338; 8 CFR 339; 8 CFR 341; 8 CFR 343a; 8 CFR 349; 8 CFR 212; . . .

*Legal Deadline:* None.

*Abstract:* The Department of Homeland Security (DHS) will propose to amend its regulations governing citizenship and naturalization. This includes clarifying the testing requirements, updating eligibility requirements, and proposing amendments to clarify definitions. DHS will also propose to amend other immigration benefit provisions, such as certain provisions related to adjustment of status and waivers of inadmissibility that can affect naturalization and acquisition of citizenship. In addition, DHS will propose removing certain outdated provisions and amending other provisions to align with current statutory framework, such as updating the adoption-related regulatory provisions consistent with the Intercountry Adoption Universal Accreditation Act of 2012.

*Statement of Need:* These proposed changes, some of which were requested by the public, are needed to improve the efficiency, effectiveness, accessibility, uniformity, and consistency of adjudications.

*Summary of Legal Basis:* DHS's authority is found in several statutory provisions. Section 102 of the Homeland Security Act of 2002 (Pub. L. 107-296, 116 Stat. 2135), 6 U.S.C. 112, and section 103(a) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. 1103(a), charge the Secretary with the administration and enforcement of the immigration and naturalization laws of the United States. In addition to establishing the Secretary's general authority for the administration and enforcement of immigration laws, section 103(a) of the Act, 8 U.S.C. 1103(a), enumerates various related authorities that include the Secretary's authority to establish such regulations as the Secretary deems necessary for carrying out the Secretary's authority under the Act.

*Anticipated Cost and Benefits:* DHS is currently considering the specific impacts of the proposed provisions.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/23	

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Undetermined.

*Agency Contact:* Mark Phillips, Residence and Naturalization Division Chief, Department of Homeland Security, U.S. Citizenship and Immigration Services, Office of Policy and Strategy, 5900 Capital Gateway

Drive, Suite 4S190, Camp Springs, MD 20588-0009, Phone: 240 721-3000.  
*RIN:* 1615-AC80

## DHS—USCIS

Final Rule Stage

### 93. U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements [1615-AC68]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 8 U.S.C. 1356(m), (n)  
*CFR Citation:* 8 CFR 103; 8 CFR 106; 8 CFR 204; 8 CFR 212; 8 CFR 214; 8 CFR 240; 8 CFR 244; 8 CFR 245; 8 CFR 245a; 8 CFR 264; 8 CFR 274a.

*Legal Deadline:* None.

*Abstract:* On January 4, 2023, the Department of Homeland Security (DHS) published a notice of proposed rulemaking (NPRM or proposed rule) 88 FR 402 that proposed to adjust the fees charged by U.S. Citizenship and Immigration Services (USCIS) for immigration and naturalization benefit requests. On August 3, 2020, DHS adjusted the fees USCIS charges for immigration and naturalization benefit requests, imposed new fees, revised certain fee waiver and exemption policies, and changed certain application requirements via the rule "USCIS Fee Schedule & Changes to Certain Other Immigration Benefit Request Requirements." DHS has been preliminarily enjoined from implementing that rule by court order. This rule would rescind and replace the changes made by the August 3, 2020, rule and establish new USCIS fees to recover USCIS operating costs. DHS solicited public comment on the NPRM, which DHS intends to consider and address in a final rule.

*Statement of Need:* USCIS projects that its costs of providing immigration adjudication and naturalization services will exceed the financial resources available to it under its existing fee structure. DHS proposes to adjust the USCIS fee structure to ensure that USCIS recovers the costs of meeting its operational requirements.

The CFO Act requires each agency's chief financial officer to "review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value."

*Summary of Legal Basis:* INA 286(m) and (n), 8 U.S.C. 1356(m) and (n), authorize the Attorney General and

Secretary of Homeland Security to recover the full cost of providing immigration adjudication and naturalization services by establishing and collecting fees deposited into the Immigration Examinations Fee Account.

**Anticipated Cost and Benefits:** In the published proposed rule, DHS estimated the annualized net costs to the public would be \$532,379,138 discounted at 3- and 7-percent. Fee increases and other changes in this proposed rule would result in annualized transfer payments from applicants/petitioners to USCIS of approximately \$1,612,127,862 discounted at both 3-percent and 7-percent. Fee reductions and exemptions in this proposed rule would result in annualized transfer payments from USCIS to applicants/petitioners of approximately \$116,372,429 discounted at both 3-percent and 7-percent. The annualized transfer payments from the Department of Defense (DoD) to USCIS would be approximately \$222,145 at both 3- and 7-percent discount rates. DHS is currently considering the specific impacts of the final rule's provisions.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/04/23	88 FR 402
NPRM Correction	01/09/23	88 FR 1172
NPRM Comment Period End.	03/06/23	
NPRM Comment Period Extended.	02/24/23	88 FR 11825
NPRM Comment Period Extended End.	03/13/23	
Final Action .....	04/00/24	

**Regulatory Flexibility Analysis Required:** Yes.

**Small Entities Affected:** Businesses, Governmental Jurisdictions, Organizations.

**Government Levels Affected:** None.

**URL For More Information:** <https://www.regulations.gov>.

**URL For Public Comments:** <https://www.regulations.gov>.

**Agency Contact:** Kika Scott, Chief Financial Officer, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588–0009, *Phone:* 240 721–3000.

*RIN:* 1615–AC68

**DHS—U.S. COAST GUARD (USCG)**

Proposed Rule Stage

**94. Shipping Safety Fairways Along the Atlantic Coast [1625–AC57]**

**Priority:** Other Significant.

**Legal Authority:** 46 U.S.C. 70001; 46 U.S.C. 70003; 46 U.S.C. 70034

**CFR Citation:** 33 CFR 166; 33 CFR 167.

**Legal Deadline:** None.

**Abstract:** The Coast Guard seeks comments regarding the possible establishment of shipping safety fairways (fairways) along the Atlantic Coast of the United States. Fairways are marked routes for vessel traffic in which any fixed obstructions are prohibited. The proposed fairways are based on studies about vessel traffic along the Atlantic Coast. The Coast Guard is coordinating this action with the Bureau of Offshore Energy Management (BOEM) to minimize the impact on potential offshore energy leases.

**Statement of Need:** This rulemaking would establish shipping safety fairways along the Atlantic coast of the United States to facilitate the direct and unobstructed transits of ships and facilitate development on the outer continental shelf. The establishment of fairways would ensure that obstruction-free routes are preserved to and from US ports and along the Atlantic coast.

**Summary of Legal Basis:** Section 70003 of title 46 United States Code (46 U.S.C. 70003) directs the Secretary of the department in which the Coast Guard resides to designate necessary fairways that provide safe access routes for vessels proceeding to and from U.S. ports.

**Alternatives:** The ANPRM outlined the Coast Guard's plans for fairways along the Atlantic Coast and requested information and data associated with the regulatory concepts. The Coast Guard will use this information and data to shape regulatory language and alternatives and assess the associated impacts in the NPRM. The Coast Guard is also considering comments received on port access route studies notices in development of the proposed rule.

**Anticipated Cost and Benefits:** The fairways are designed to keep traditional vessel navigation routes free from fixed structures that could impact navigation safety and impede other shared offshore activities. Fairways are not mandatory; however, the Coast Guard recognizes that there is increasing interest in offshore commercial development, including offshore renewable energy installations, and believes this development is best served by the establishment of consistent and well-

defined fairways. The proposed fairways would help ensure that offshore developments remain viable by allowing developers to construct and maintain installations without risk of impeding vessel traffic.

**Risks:** The Bureau of Ocean Energy Management (BOEM) is leasing offshore areas that could affect customary shipping routes. Expeditious pursuit of this rulemaking is intended to prevent conflict between customary shipping routes and areas that may be leased by BOEM.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	06/19/20	85 FR 37034
ANPRM Comment Period End.	08/18/20	
NPRM .....	11/00/23	

**Regulatory Flexibility Analysis Required:** Undetermined.

**Government Levels Affected:** None.

**Additional Information:** Docket number USCG–2019–0279.

**URL For More Information:** <https://www.regulations.gov>.

**URL For Public Comments:** <https://www.regulations.gov>.

**Agency Contact:** Maureen Kallgren Program Manager, Department of Homeland Security, U.S. Coast Guard, Office of Navigation Systems (CG–NAV), 2703 Martin Luther King Jr. Avenue SE, STOP 7509, Washington, DC 20593–7509, *Phone:* 202 372–1561, *Email:* [maureen.r.kallgren2@uscg.mil](mailto:maureen.r.kallgren2@uscg.mil).

*RIN:* 1625–AC57

**DHS—USCG**

**95. Cybersecurity in the Marine Transportation System [1625–AC77]**

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

**Legal Authority:** 46 U.S.C. 70101; 46 U.S.C. 70102; 46 U.S.C. 70104; 46 U.S.C. 70124

**CFR Citation:** 33 CFR 101.

**Legal Deadline:** None.

**Abstract:** The Coast Guard proposes to update its maritime security regulations by adding cybersecurity requirements to existing Maritime Security regulations in 33 CFR part 101 *et seq.* This proposed rulemaking is part of an ongoing effort to address emerging cybersecurity risks and threats to maritime security by including additional security requirements to safeguard the marine transportation system.

**Statement of Need:** The purpose of this rulemaking is to set minimum cybersecurity requirements for vessels

and facilities to safeguard the Marine Transportation System (MTS) from cybersecurity vulnerabilities.

**Summary of Legal Basis:** The Coast Guard exercises the Maritime Transportation Security Act of 2002 (MTSA) authorities of Chapter 701 of Title 46 of the U.S. Code. This includes the authority to promulgate Chapter 701 regulations under 46 U.S.C. 70124. This statute provides that the Secretary of Homeland Security may issue regulations necessary to implement Chapter 701 of Title 46.

**Anticipated Cost and Benefits:** The regulatory analysis for the proposed rule is still being developed.

**Timetable:**

Action	Date	FR Cite
NPRM .....	12/00/23	

**Regulatory Flexibility Analysis**

**Required:** Yes.

**Small Entities Affected:** Businesses.

**Government Levels Affected:**

Undetermined.

**Agency Contact:** Frank Strom, Chief, Systems Engineering Division (CG–ENG–3), Department of Homeland Security, U.S. Coast Guard, Office of Design and Engineering Standards, 2703 Martin Luther King Jr. Avenue SE, STOP 7509, Washington, DC 20593–7509, Phone: 202 372–1375, Email: frank.a.strom@uscg.mil.

RIN: 1625–AC77

**DHS—USCG**

**96. Marpol Annex VI; Prevention of Air Pollution From Ships [1625–AC78]**

**Priority:** Other Significant.

**Legal Authority:** 33 U.S.C. 1903

**CFR Citation:** 33 CFR 151.

**Legal Deadline:** None.

**Abstract:** The Coast Guard is proposing regulations to carry out the provisions of Annex VI of the MARPOL Protocol, which is focused on the prevention of air pollution from ships. The Act to Prevent Pollution from Ships has already given direct effect to most provisions of Annex VI, and the Coast Guard and the Environmental Protection Agency have carried out some Annex VI provisions through previous rulemakings. This proposed rule would fill gaps in the existing framework for carrying out the provisions of Annex VI. Chapter 4 of Annex VI contains shipboard energy efficiency measures that include short-term measures reducing carbon emissions linked to climate change and supports Administration goals outlined in Executive Order 14008 titled Tackling

the Climate Crisis at Home and Abroad. This proposed rule would apply to U.S.-flagged ships. It would also apply to foreign-flagged ships operating either in U.S. navigable waters or in the U.S. Exclusive Economic Zone.

**Statement of Need:** The Coast Guard is proposing regulations to carry out the provisions of Annex VI of the MARPOL Protocol, which is focused on the prevention of air pollution from ships. The Act to Prevent Pollution from Ships has already given direct effect to most provisions of Annex VI, and the Coast Guard and the Environmental Protection Agency have carried out some Annex VI provisions through previous rulemakings. This proposed rule would fill gaps in the existing framework for carrying out the provisions of Annex VI and explain how the United States has chosen to carry out certain discretionary aspects of Annex VI.

**Summary of Legal Basis:** Section 4 of the Act to Prevent Pollution from Ships (Pub. L. 96–478, Oct. 21, 1980, 94 Stat. 2297), as reflected in 33 U.S.C. 1903, directs the Secretary of Homeland Security to prescribe any necessary or desired regulations to carry out the provisions of the MARPOL Protocol. The “MARPOL Protocol” is defined in 33 U.S.C. 1901 and includes Annex VI of the International Convention for the Prevention of Pollution from Ships, 1973.

**Anticipated Cost and Benefits:** USCG anticipates the costs for the proposed rule to come primarily from additional labor for 5 requirements including overseeing surveys; developing and maintaining a fuel-switching procedure; recording various data during each fuel switching; developing and managing a Volatile organic compounds (VOC) management plan; crew member to calculate and report the attained Energy Efficient Design Index (EEDI) of the vessel, and crew member to develop and maintain the Ship Energy Efficiency Management Plan (SEEMP). USCG expects the proposed rule to have benefits from avoided engine emissions.

**Timetable:**

Action	Date	FR Cite
NPRM .....	07/00/24	

**Regulatory Flexibility Analysis**

**Required:** Yes.

**Small Entities Affected:** Businesses.

**Government Levels Affected:** None.

**Federalism:** Undetermined.

**Agency Contact:** Frank Strom, Chief, Systems Engineering Division (CG–ENG–3), Department of Homeland Security, U.S. Coast Guard, Office of Design and Engineering Standards, 2703

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RIN: 1625–AC78

**DHS—U.S. CUSTOMS AND BORDER PROTECTION (USCBP)**

Final Rule Stage

**97. Advance Passenger Information System: Electronic Validation of Travel Documents [1651–AB43]**

**Priority:** Other Significant.

**Legal Authority:** 49 U.S.C. 44909; 8 U.S.C. 1221

**CFR Citation:** 19 CFR 122.

**Legal Deadline:** None.

**Abstract:** U.S. Customs and Border Protection (CBP) regulations require commercial air carriers to electronically transmit passenger information to CBP’s Advance Passenger Information System (APIS) prior to an aircraft’s arrival in or departure from the United States. CBP proposes to amend these regulations to incorporate additional carrier requirements that will enable CBP to validate each passenger’s travel documents prior to the passenger boarding the aircraft. This proposed rule would also require air carriers to transmit additional data elements through APIS for all commercial aircraft passengers arriving in the United States in order to support border operations and national security. The collection of additional data elements will support the efforts of the Centers for Disease Control, within the Department of Health and Human Services, to monitor and contact-trace health incidents. This rule is consistent with Executive Order 14058, which directs agencies to take actions that improve service delivery and customer experience by decreasing administrative burdens, enhancing transparency, and improving the efficiency and effectiveness of government.

**Statement of Need:** Current regulations require U.S. citizens and foreign travelers entering and leaving the United States via air travel to submit travel documents containing biographical information, such as a passenger’s name and date of birth. For security purposes, CBP compares the information on passengers’ documents to various databases and the terrorist watch list through APIS. While in the case of security threats CBP may require an air carrier to deny boarding to the passenger. CBP recommends that air carriers deny boarding to those likely to be deemed inadmissible upon arrival in the United States. To further improve

CBP’s vetting processes with respect to identifying and preventing passengers with fraudulent or improper documents from traveling to or leaving the United States, CBP proposes to require carriers to receive from CBP a message that would state whether CBP matched the travel documents of each passenger to a valid, authentic travel document prior to departure to the United States from a foreign port or place or departure from the United States. The proposed rule also would require carriers to submit passenger contact information while in the United States to CBP through APIS. Submission of such information would enable CBP to identify and interdict individuals posing a risk to border, national, and aviation safety and security more quickly. Collecting these additional data elements would also enable CBP to further assist CDC to monitor and trace the contacts of those involved in serious public health incidents upon CDC request. Additionally, the proposed rule would allow carriers to include the aircraft tail number in their electronic messages to CBP and make technical changes to conform with current practice.

**Anticipated Cost and Benefits:** The proposed rule would result in costs to CBP, air carriers, and passengers for additional time spent coordinating to resolve a passenger’s status should there be a security issue upon checking in for a flight. In addition, CBP will incur costs for technological improvements to its systems. CBP, air carriers, and passengers would benefit from reduced passenger processing times during customs screening. Unquantified benefits would result from greater efficiency in passenger processing pre-flight, improved national security, and fewer penalties for air carriers following entry denial of a passenger.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/02/23	88 FR 7016
NPRM Comment Period End.	04/03/23	
Final Action .....	08/00/24	

**Regulatory Flexibility Analysis Required:** No.  
**Government Levels Affected:** None.  
**URL For More Information:** <https://www.regulations.gov>.  
**URL For Public Comments:** <https://www.regulations.gov>.  
**Agency Contact:** Robert Neumann, Program Manager, Office of Field Operations, Department of Homeland Security, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229, *Phone:* 202

412–2788, *Email:* [robert.m.neumann@cbp.dhs.gov](mailto:robert.m.neumann@cbp.dhs.gov).  
*RIN:* 1651–AB43

**DHS—TRANSPORTATION SECURITY ADMINISTRATION (TSA)**

Proposed Rule Stage

**98. Enhancing Surface Cyber Risk Management [1652–AA74]**

**Priority:** Other Significant.  
**Legal Authority:** 49 U.S.C. 114; Pub. L. 110–53, secs. 1405, 1512 and 1531  
**CFR Citation:** 49 CFR 1520; 49 CFR 1570; 49 CFR 1580; 49 CFR 1582; 49 CFR 1584.  
**Legal Deadline:** None.

**Abstract:** On July 28, 2021, the President issued the National Security Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems. In response to the ongoing threat to pipeline systems, TSA used its authority under 49 U.S.C. 114 to issue emergency security directives to owners and operators of TSA-designated critical pipelines that transport hazardous liquids and natural gas to implement a number of urgently needed protections against cyber intrusions. TSA also issued security directives in the freight, passenger, and transit-rail sectors under the same statutory authority. TSA is committed to enhancing and sustaining industry’s resilience to cybersecurity attacks. TSA intends to issue a rulemaking that will permanently codify critical cybersecurity requirements for pipeline and rail modes. Through this rulemaking, TSA will also address certain requirements in the Implementing Recommendations of the 9/11 Commission Act of 2007 related to information and operational technology systems. TSA is committed to enhancing and sustaining cybersecurity for all modes of transportation and intends to issue a rulemaking that may codify these and other requirements following an opportunity for notice and comment. In addition to holding numerous technical roundtables with the industry regarding cybersecurity requirements, TSA also solicited public input in the development of this rulemaking through publication of an advance notice of proposed rulemaking in November 2022.

**Statement of Need:** This rulemaking is necessary to address the ongoing cybersecurity threat to U.S. transportation modes with potential impacts on national security, including economic security.

**Anticipated Cost and Benefits:** TSA is in the process of determining the costs and benefits of this rulemaking.  
*Timetable:*

Action	Date	FR Cite
ANPRM .....	11/30/22	87 FR 73527
ANPRM Comment Period End.	01/17/23	
ANPRM Comment Period Extended.	12/23/22	87 FR 78911
ANPRM Comment Period Extended End.	02/01/23	
NPRM .....	11/00/23	

**Regulatory Flexibility Analysis Required:** Undetermined.  
**Government Levels Affected:** Undetermined.  
**URL For More Information:** <https://www.regulations.gov>.  
**URL For Public Comments:** <https://www.regulations.gov>.  
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James Ruger, Chief Economist, Economic Analysis Branch–Coordination & Analysis Division, Department of Homeland Security, Transportation Security Administration, Policy, Plans, and Engagement, 6595 Springfield Center Drive, Springfield, VA 20598–6028, *Phone:* 571 227–5519, *Email:* [james.ruger@tsa.dhs.gov](mailto:james.ruger@tsa.dhs.gov).  
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**Related RIN:** Related to 1652–AA56  
*RIN:* 1652–AA74

**DHS—TSA**

Final Rule Stage

**99. Flight Training Security Program [1652–AA35]**

**Priority:** Other Significant.  
**Legal Authority:** 6 U.S.C. 469(b); 49 U.S.C. 114; 49 U.S.C. 44939; 49 U.S.C. 46105  
**CFR Citation:** 49 CFR part 1552.  
**Legal Deadline:** Final, Statutory, February 10, 2004, interim final rule required within 60 days of enactment of the Vision 100 Act.

Public Law 108–176, sec. 612(a) (Dec. 12, 2003) requires an interim final rule to implement the requirements of 49 U.S.C. 44939, as further amended by section 612(a), not later than 60 days after the date of enactment of the act. Public Law 108–90, sec. 520 (Oct. 1, 2003), codified at 6 U.S.C. 469(b), requires collection of fees authorized by Public Law 108–176). Public Law 110–329, sec. 543 (Sept. 30, 2008) further amends 6 U.S.C. 469 to include both initial and recurrent training.

**Abstract:** As required by the Vision 100 Act, TSA issued an Interim Final Rule (IFR) (effective September 20, 2004) that transferred responsibility for the vetting of flight school candidates from the Department of Justice to TSA, with certain modifications to the program required by the act. TSA reopened the comment period for 30 days on May 18, 2018. This IFR applies to training providers and to individuals who apply for or receive flight training. Flight schools are required to notify TSA when non-U.S. citizens, non-U.S. nationals, and other individuals designated by TSA, apply for flight training or recurrent flight training. TSA issued exemptions and interpretations in response to comments on the IFR and questions raised during operation of the program since 2004, and a notice published in 2018 extending the comment period on the IFR. Many of the changes made to the program through this final rule are in direct responses to recommendations from the Aviation Security Advisory Committee, a statutorily created committee charged with providing input to TSA on regulatory requirements. Based on the comments and questions received, TSA is finalizing the rule and considering modifications that would change the frequency of security threat assessments from a high-frequency, event-based interval, to a time-based interval; clarify the definitions and other provisions of the rule; and enable industry to use TSA-provided electronic recordkeeping systems for all documents required to demonstrate compliance with the rule. These and other changes will provide significant cost-savings to the industry and individuals seeking flight training while also enhancing security.

**Statement of Need:** In the years since TSA published the IFR, members of the aviation industry, the public, and federal oversight organizations have identified areas where the Flight Training Security Program (formerly the Alien Flight Student Program) could be improved. TSA's internal procedures and processes for vetting applicants also have advanced through technology and other enhancements. Publishing a final

rule that addresses comments on the IFR and aligns with modern TSA vetting practices would streamline and reduce burden for the Flight Training Security Program application, vetting, and recordkeeping process for all parties involved.

**Anticipated Cost and Benefits:** TSA is considering revising the requirements of the Flight Training Security Program to reduce costs and industry burden. One action TSA is considering is an electronic recordkeeping platform where all flight training providers would upload certain information to a TSA-managed website (<https://fts.tsa.dhs.gov/>). Also at industry's request, TSA is considering changing the interval for a Security Threat Assessment of each non-U.S. citizen and non-U.S. national flight student, by eliminating the requirement for a Security Threat Assessment for each separate training event. This change would result in an annual savings, although there may be additional start-up and record retention costs for the agency as a result of this revision. The change in the interval of the Security Threat Assessment would result in immediate cost savings to flight providers and students who are neither U.S. citizens nor U.S. nationals without compromising the security process.

#### Timetable:

Action	Date	FR Cite
Interim Final Rule; Request for Comments.	09/20/04	69 FR 56324
Interim Final Rule Effective.	09/20/04	
Interim Final Rule; Comment Period End.	10/20/04	
Notice-Information Collection; 60-Day Renewal.	11/26/04	69 FR 68952
Notice-Information Collection; 30-Day Renewal.	03/30/05	70 FR 16298
Notice-Information Collection; 60-Day Renewal.	06/06/08	73 FR 32346
Notice-Information Collection; 30-Day Renewal.	08/13/08	73 FR 47203
Notice-Alien Flight Student Program Recurrent Training Fees.	04/13/09	74 FR 16880
Notice-Information Collection; 60-Day Renewal.	09/21/11	76 FR 58531
Notice-Information Collection; 30-Day Renewal.	01/31/12	77 FR 4822
Notice-Information Collection; 60-Day Renewal.	03/10/15	80 FR 12647

Action	Date	FR Cite
Notice-Information Collection; 30-Day Renewal.	06/18/15	80 FR 34927
IFR; Comment Period Re-opened.	05/18/18	83 FR 23238
IFR; Comment Period Re-opened End.	06/18/18	
Notice-Information Collection; 60-Day Renewal.	07/06/18	83 FR 31561
Notice-Information Collection; 30-Day Renewal.	10/31/18	83 FR 54761
Notice-Information Collection; 60-Day Renewal.	08/27/21	86 FR 48239
Notice-Information Collection; 30-Day Renewal.	01/19/22	87 FR 2889
Final Rule .....	11/00/23	

#### Regulatory Flexibility Analysis

**Required:** No.

**Government Levels Affected:** None.

**URL For More Information:** <https://www.regulations.gov>.

**URL For Public Comments:** <https://www.regulations.gov>.

**Agency Contact:** Stephanie Hamilton, Manager, Vetting Programs Branch, Department of Homeland Security, Transportation Security Administration, Enrollment Services & Vetting Programs, 6595 Springfield Center Drive, Springfield, VA 20598–6010, **Phone:** 571 227–2851, **Email:** [stephanie.w.hamilton@tsa.dhs.gov](mailto:stephanie.w.hamilton@tsa.dhs.gov).

James Ruger, Chief Economist, Economic Analysis Branch-Coordination & Analysis Division, Department of Homeland Security, Transportation Security Administration, Policy, Plans, and Engagement, 6595 Springfield Center Drive, Springfield, VA 20598–6028, **Phone:** 571 227–5519, **Email:** [james.ruger@tsa.dhs.gov](mailto:james.ruger@tsa.dhs.gov).

David Ross, Attorney-Advisor, Regulations and Security Standards, Department of Homeland Security, Transportation Security Administration, Chief Counsel's Office, 6595 Springfield Center Drive, Springfield, VA 20598–6002, **Phone:** 571 227–2465, **Email:** [david.ross1@tsa.dhs.gov](mailto:david.ross1@tsa.dhs.gov).

**Related RIN:** Related to 1652–AA61  
**RIN:** 1652–AA35

#### DHS—TSA

#### 100. Frequency of Renewal Cycle for Indirect Air Carrier Security Programs [1652–AA72]

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

*Legal Authority:* 49 U.S.C. 114; 49 U.S.C. 5103; 49 U.S.C. 40113; 49 U.S.C. 44901 to 44905; 49 U.S.C. 4491 to 44914; 49 U.S.C. 44916 to 44917; 49 U.S.C. 44932; 49 U.S.C. 449354 to 44936; 49 U.S.C. 46105  
*CFR Citation:* 49 CFR 1548.  
*Legal Deadline:* None.

*Abstract:* The Transportation Security Administration (TSA) is reducing the frequency of renewal applications for indirect air carriers (IACs). Currently, these entities must submit an application to renew their security program each year. Following a review of TSA’s regulatory requirements seeking to reduce the cost of compliance, TSA determined that the duration of the security program for these entities can be increased from 1 year to 3 years without having a negative impact on transportation security. This change will align the security program renewal requirement with the renewal cycle for Certified Cargo Screening Facilities under 49 CFR part 1549. This rulemaking is in response to a request from the industry subject to these requirements.

*Statement of Need:* Consistent with Executive Order 12866 and Executive Order 13563, TSA identified portions of air cargo regulations that may be tailored to impose a lesser burden on society and that may improve government processes. Under 49 CFR part 1548 indirect air carriers are required to renew their security programs each year. TSA’s robust inspection and compliance requirements make the annual renewal requirement unnecessary.

*Anticipated Cost and Benefits:* This rule would reduce the frequency of IAC security program certifications from annually to once every three years. This rule does not impose any incremental costs because regulated entities are already performing all actions required to obtain the certification in question. The expected outcome will have a minimal cost impact with positive net benefit due to time saved with a lower frequency in the renewal cycle.

*Timetable:*

Action	Date	FR Cite
Final Rule .....	09/16/09	74 FR 47705
Final Rule Effective.	09/16/09	
NPRM .....	12/27/22	87 FR 79264
NPRM Comment Period End.	02/27/23	
Final Rule .....	03/00/24	

*Regulatory Flexibility Analysis Required:* No.  
*Small Entities Affected:* No.  
*Government Levels Affected:* None.

*URL For More Information:* <https://www.regulations.gov>.  
*URL For Public Comments:* <https://www.regulations.gov>.  
*Agency Contact:* Angel Rodriguez, Acting Section Chief, Department of Homeland Security, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6028, *Phone:* 571 227–2108, *Email:* [angel.i.rodriguez@tsa.dhs.gov](mailto:angel.i.rodriguez@tsa.dhs.gov).  
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David Ross, Attorney-Advisor, Regulations and Security Standards, Department of Homeland Security, Transportation Security Administration, Chief Counsel’s Office, 6595 Springfield Center Drive, Springfield, VA 20598–6002, *Phone:* 571 227–2465, *Email:* [david.ross1@tsa.dhs.gov](mailto:david.ross1@tsa.dhs.gov).  
*Related RIN:* Related to 1652–AA23  
*RIN:* 1652–AA72

**DHS—TSA**  
**101. • Minimum Standards for Driver’s Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Waiver for Mobile Driver’s Licenses [1652–AA76]**

*Priority:* Other Significant. Major under 5 U.S.C. 801.  
*Legal Authority:* 49 U.S.C. 30301 note; 6 U.S.C. 111; 6 U.S.C. 112  
*CFR Citation:* 6 CFR 37.  
*Legal Deadline:* None.  
*Abstract:* This proposal is the first rulemaking in a multi-phased project to enable Federal agencies, at their discretion, to continue accepting mobile driver’s licenses and mobile identification cards (collectively referred to as mDLs), while the Transportation Security Administration (TSA) develops comprehensive regulatory requirements for REAL ID-compliant mDLs. This rule is proposing to add new mDL definitions to 6 CFR part 37 (REAL ID regulations), and to establish a process that states must follow to apply for a mDL waiver from the REAL ID regulations. This initial rulemaking would also enable federal agencies to accept State mDLs for official purposes from States who are issued such a waiver.

After multiple industry technical standards are finalized and published, TSA would repeal the waiver provisions

and issue regulations setting the minimum technical requirements and security standards for mDLs to enable Federal agencies to accept mDLs for official purposes. The Department of Homeland Security (DHS) solicited public participation in the development of requirements in this rulemaking through a request for information published in April 2021, including two extensions of the comment period. As part of this public engagement, DHS also held a virtual public meeting on June 30, 2021, to discuss the purposes of the rulemaking and provide an additional forum of comments by stakeholders and other interested persons.

Effective May 22, 2023, authority to administer the REAL ID program was delegated from the Secretary of Homeland Security to the Administrator of TSA pursuant to DHS Delegation No. 7060.02.1.

*Statement of Need:* This rulemaking is necessary to implement authority under the REAL ID Modernization Act, which clarified that REAL ID requirements apply to mDLs issued in accordance with regulations prescribed by the Secretary. The rule would enable continued mDL acceptance when REAL ID enforcement begins in 2025.

*Anticipated Cost and Benefits:* TSA anticipates that States, TSA, and some Federal agencies will incur costs associated with using mDLs. States incur costs to submit waiver applications, TSA incurs costs to administer the waiver program, and Federal agencies that choose to accept mDLs for official purposes incur costs to implement mDL acceptance. TSA anticipates benefits for all stakeholders, including increased convenience, security, privacy, and health benefits from contact-free identity verification.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/30/23	88 FR 60056
NPRM Comment Period End.	10/16/23	
Final Rule .....	05/00/24	

*Regulatory Flexibility Analysis Required:* No.  
*Government Levels Affected:* Federal, State.  
*URL For More Information:* <https://www.regulations.gov>.  
*URL For Public Comments:* <https://www.regulations.gov>.  
*Agency Contact:* George Petersen, Senior Program Manager, REAL ID Program, Department of Homeland Security, Transportation Security Administration, Enrollment Services &

Vetting Programs, 6595 Springfield Center Drive, Springfield, VA 20598–6010, Phone: 571 227–2215, Email: [george.petersen@tsa.dhs.gov](mailto:george.petersen@tsa.dhs.gov).

Related RIN: Previously reported as 1601–AB06, Related to 1601–AA37, Related to 1601–AB01, Related to 1601–AB03

RIN: 1652–AA76

## DHS—U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (USICE)

Proposed Rule Stage

### 102. Clarifying and Revising Custody Determination and Detention Classification Procedures [1653–AA92]

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

Legal Authority: 8 U.S.C. 1103; 6 U.S.C. 251; 6 U.S.C. 111; 8 U.S.C. 1226 CFR Citation: 8 CFR 236.1.

Legal Deadline: None.

Abstract: The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) and the Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) (collectively, the Departments) are planning to amend the regulations that govern detention and release determinations for noncitizens subject to the custody provisions in section 236 of the Immigration and Nationality Act (Act), 8 U.S.C. 1226(a). The goal of the proposed regulation would be to clarify the scope and applicability of section 236(a) of the Act, 8 U.S.C. 1226(a), and the procedures that apply under that section, including the burden and standard of proof for continued detention at initial custody determinations and any custody redetermination hearings, and related issues. This rulemaking is consistent with Executive Order 14058, which directs agencies to take actions that improve service delivery and customer experience by decreasing administrative burdens, enhancing transparency, and improving the efficiency and effectiveness of government.

Statement of Need: The proposed rule is needed to bring clarity and uniformity to the procedures governing ICE initial custody decisions and IJ bond hearings for noncitizens subject to discretionary detention under INA 236(a). This rule will also revise the procedures for determining whether a noncitizen is properly subject to INA 236(c) detention. Additionally, this rule will clarify the detention authority that applies during the petition for review process for certain noncitizens seeking

judicial review of their removal orders. Lastly, the proposed rule will make organizational changes to the structure of the EOIR regulations governing custody redetermination hearings and address outdated provisions in the Departments' custody and bond regulations. The Departments believe this rulemaking will help address issues that frequently arise in litigation brought by noncitizens challenging the Departments' existing custody and bond hearing procedures and it may also help to resolve differing interpretations among Federal circuit courts.

Anticipated Cost and Benefits: DOJ and DHS are currently considering the specific cost and benefit impacts of the proposed provisions.

Timetable:

Action	Date	FR Cite
NPRM .....	12/00/23	

Regulatory Flexibility Analysis Required: Undetermined.

Government Levels Affected: Undetermined.

Federalism: Undetermined.

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).

Related RIN: Related to 1125–AB27  
RIN: 1653–AA92

## DHS—FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

Proposed Rule Stage

### 103. National Flood Insurance Program: Standard Flood Insurance Policy, Homeowner Flood Form [1660–AB06]

Priority: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

Legal Authority: 42 U.S.C. 4001 *et seq.*  
CFR Citation: 44 CFR 61.

Legal Deadline: None.

Abstract: The National Flood Insurance Program (NFIP), established pursuant to the National Flood Insurance Act of 1968, is a voluntary program in which participating communities adopt and enforce a set of minimum floodplain management requirements to reduce future flood damages. Property owners in participating communities are eligible to purchase NFIP flood insurance. This proposed rule would revise the Standard Flood Insurance Policy by adding a new Homeowner Flood Form

and five accompanying endorsements. The new Homeowner Flood Form would replace the Dwelling Form as a source of coverage for homeowners of one-to-four family residences. Together, the new Form and endorsements would more closely align with property and casualty homeowners insurance and provide increased options and coverage in a more user-friendly and comprehensible format.

Statement of Need: The National Flood Insurance Act requires FEMA to provide by regulation the general terms and conditions of insurability applicable to properties eligible for flood insurance coverage. 42 U.S.C. 4013(a). To comply with this requirement, FEMA adopts the Standard Flood Insurance Policy (SFIP) in regulation, which sets out the terms and conditions of insurance. See 44 CFR part 61, Appendix A. FEMA must use the SFIP for all flood insurance policies sold through the NFIP. See 44 CFR 61.13.

The SFIP is a single-peril (flood) policy that pays for direct physical damage to insured property. There are currently three forms of the SFIP: the Dwelling Form, the General Property Form, and the Residential Condominium Building Association Policy (RCBAP) Form. The Dwelling Form insures a one-to-four family residential building or a single-family dwelling unit in a condominium building. See 44 CFR part 61, Appendix A(1). Policies under the Dwelling Form offer coverage for building property, up to \$250,000, and personal property up to \$100,000. The General Property Form ensures a five-or-more family residential building or a non-residential building. See 44 CFR part 61, Appendix A(2). The General Property Form offers coverage for building and contents up to \$500,000 each. The RCBAP Form insures residential condominium association buildings and offers building coverage up to \$250,000 multiplied by the number of units and contents coverage up to \$100,000 per building. See 44 CFR part 61, appendix A(3). RCBAP contents coverage insures property owned by the insured condominium association. Individual unit owners must purchase their own Dwelling Form policy in order to insure their own contents.

FEMA last substantively revised the SFIP in 2000. See 65 FR 60758 (Oct. 12, 2000). In 2020, FEMA published a final rule that made non-substantive clarifying and plain language improvements to the SFIP. See 85 FR 43946 (July 20, 2020). However, many policyholders, agents, and adjusters continue to find the SFIP difficult to



read and interpret compared to other, more modern, property and casualty insurance products found in the private market. Accordingly, FEMA proposes to adopt a new Homeowner Flood Form.

The new Homeowner Flood Form, which FEMA proposes to add to its regulations at 44 CFR 61 appendix A(4), would protect property owners in a one-to-four family residence. Upon adoption, the Homeowner Flood Form would replace the Dwelling Form as a source of coverage for this class of residential properties. FEMA would continue to use the Dwelling Form to insure landlords, renters, and owners of mobile homes, travel trailers, and condominium units. Compared to the current Dwelling Form, the new Homeowner Flood Form would clarify coverage and more clearly highlight conditions, limitations, and exclusions in coverage as well as add and modify coverages and coverage options. FEMA also proposes adding to its regulations five endorsements to accompany the new Form: Increased Cost of Compliance Coverage, Actual Cash Value Loss Settlement, Temporary Housing Expense, Basement Coverage, and Builder's Risk. These endorsements, which FEMA proposes to codify at 44 CFR 61 appendices A(101)-(105), respectively, would give policyholders the option of amending the Homeowner Flood Form to modify coverage with a commensurate adjustment to premiums charged. Together, the Homeowner Flood Form and accompanying endorsements would increase options and coverage for owners of one-to-four family residences.

FEMA intends that this new Form will be more user-friendly and comprehensible. As a result, the new Homeowner Flood Form and its accompanying endorsements would provide a more personalized, customizable product than the NFIP has offered during its 50 years. In addition to aligning with property and casualty homeowners' insurance, the result would increase consumer choice and simplify coverage.

*Anticipated Cost and Benefits:* FEMA estimates that this rulemaking would result in an increase in transfer payments from policyholders to FEMA and insurance providers in the form of flood insurance premiums, and from FEMA to policyholders in the form of claims payments. Additionally, this rulemaking would result in benefits to policyholders, insurance providers, and FEMA, mostly through cost savings due to increased clarity and fulfillment of customer expectations through expanded coverage options. It would also help the NFIP better signal risk

through premiums, reduce the need for Federal assistance, and increase resilience by enhancing mitigation efforts. Lastly, FEMA, States, and insurance providers will incur costs for implementation and familiarization of the rule.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/00/24	

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* Federal.  
*Agency Contact:* Christine Merk, Lead Management and Program Analyst, Department of Homeland Security, Federal Emergency Management Agency, Insurance Analytics and Policy Branch, 400 C Street SW, Washington, DC 20472, *Phone:* 202 735-6324, *Email:* christine.merk@fema.dhs.gov.

*RIN:* 1660-AB06

**DHS—FEMA**

**104. Update of FEMA'S Public Assistance Regulations [1660-AB09]**

*Priority:* Other Significant.

*Legal Authority:* 42 U.S.C. 5121 to 5207

*CFR Citation:* 44 CFR 206.

*Legal Deadline:* None.

*Abstract:* The Federal Emergency Management Agency (FEMA) proposes to revise its Public Assistance (PA) program regulations to reflect current statutory authorities and implement program improvements. The proposed rule would incorporate changes brought about by amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act. FEMA is also proposing clarifications and corrections to improve the efficiency and consistency of the Public Assistance program.

*Statement of Need:* The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Pub. L. 100-707, 102 Stat. 4689, authorizes the President to provide Federal assistance when the severity and magnitude of an incident or threatened incident, exceeds the affected State, local, Indian Tribal, and Territorial government's (SLTT's) capabilities to effectively respond or recover. 42 U.S.C. 5170 and 5191. If the President declares an emergency or major disaster authorizing the Public Assistance program, FEMA may award Public Assistance grants to assist SLTTs and certain private nonprofit (PNP) organizations so communities can quickly respond to and recover from the major disaster or emergency.

FEMA proposes to amend its Public Assistance and Community Disaster Loan program regulations to incorporate statutory changes that have amended sections of the Stafford Act relating to Public Assistance and Community Disaster Loans and to improve program administration. These include the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), Public Law 109-295, 120 Stat. 1394, the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109-347, 120 Stat. 1884, the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act), Public Law 109-308, 120 Stat. 1725, the Sandy Recovery Improvement Act of 2013 (SRIA), Public Law 113-2, 127 Stat. 39, the Emergency Information Improvement Act of 2015, Public Law 114-111, 129 Stat. 2240, the Bipartisan Budget Act of 2018, Public Law 115-123, 132 Stat. 64, and the FAA Reauthorization Act of 2018, Division D, Disaster Recovery Reform Act of 2018 (DRRA), Public Law 115-254, 132 Stat. 3438. FEMA also proposes to implement program improvements and make clarifications and corrections to existing regulations.

*Anticipated Cost and Benefits:* FEMA estimates that this rulemaking would result in benefits to SLTTs and FEMA from improving clarity and aligning FEMA regulations with statutory changes and current practices. Such increased clarity and understanding would improve the efficiency and the consistency of FEMA's PA programs. Additionally, proposed improvements to State/Tribal administrative plans would better position SLTTs to respond to and to recover from emergencies and disasters. Lastly, FEMA estimates increases in costs for SLTTs due to additional paperwork burden and familiarization of the rule.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/24	

*Regulatory Flexibility Analysis Required:* No.

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

*Additional Information:* Docket ID FEMA-2023-0005.

*Agency Contact:* Tod Wells, Deputy Director, Public Assistance Division Recovery Directorate, Department of Homeland Security, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472-3100, *Phone:* 202 646-3834, *Email:* fema-recovery-policy@fema.dhs.gov.

*RIN:* 1660-AB09

**DHS—FEMA****105. Updates to Floodplain Management and Protection of Wetlands Regulations To Implement the Federal Flood Risk Management Standard [1660–AB12]**

*Priority:* Other Significant.

*Legal Authority:* 6 U.S.C. 101 *et seq.*; 42 U.S.C. 4001 *et seq.*; 42 U.S.C. 4321 *et seq.*; E.O. 11988 of May 24, 1977, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990 of May 24, 1977, 42 FR 26961, 3 CFR, 1977 Comp., p. 121; E.O. 13690, 80 FR 6425; E.O. 14030, 86 FR 27967

*CFR Citation:* 44 CFR 9.

*Legal Deadline:* None.

*Abstract:* Consistent with President Biden's Executive Order on Climate Related Financial Risk (E.O. 14030), the Federal Emergency Management Agency (FEMA) proposes to amend its regulations at 44 CFR part 9, "Floodplain Management and Protection of Wetlands," to incorporate amendments to Executive Order 11988 and the Federal Flood Risk Management Standard (FFRMS). The FFRMS is a flexible framework allowing agencies to choose among three approaches to define the floodplain and corresponding flood elevation requirements for federally funded projects. 44 CFR part 9 describes FEMA's process under Executive Order 11988 for determining whether the proposed location for an action falls within a floodplain and how to complete the action in the floodplain, in light of the risk of flooding. The proposed rule would change how FEMA defines a floodplain with respect to certain actions. Additionally, under the proposed rule, FEMA would use natural systems, ecosystem process, and nature-based approaches, where practicable, when developing alternatives to locating the proposed action in the floodplain.

FEMA has engaged the public extensively on these matters. On February 5, 2015, FEMA acting on behalf of the Mitigation Framework Leadership Group, posted a **Federal Register** notice seeking comments on a draft of the Revised Guidelines for Implementing Executive Order 11988, Floodplain Management. The 60-day comment period was extended an additional 30 days. During the public comment period for the Revised Guidelines, FEMA sent advisories to representatives from Governors' offices nationwide inviting comments on the draft Revised Guidelines. Over 25 meetings were held across the country with State, local, and Tribal officials and interested stakeholders to discuss the draft Revised Guidelines as well as 9 public listening sessions across the

country attended by over 700 participants to facilitate feedback. All relevant comments received in response to these efforts have been posted to the public rulemaking docket on the Federal eRulemaking portal at <https://www.regulations.gov/document/FEMA-2015-0006-0001/comment>. Comments from meetings and listening sessions can be found at <https://www.regulations.gov/docket/FEMA-2015-0006/document>. Additionally, FEMA published a Notice of Proposed Rulemaking (NPRM) in 2016 seeking public comment on FEMA's proposed implementation of the Revised Guidelines. All relevant comments received in response to the 2016 NPRM have been posted to the public rulemaking docket on the Federal eRulemaking portal at <https://www.regulations.gov/document/FEMA-2015-0006-0373/comment>.

*Statement of Need:* The United States is experiencing increased flooding and flood risk from changing conditions. FEMA has not made significant updates to its regulations governing floodplain management to reflect the challenges faced because of increased flooding and changing conditions since initial publication in 1980. As a result, FEMA is now proposing to amend 44 CFR part 9, "Floodplain Management and Protection of Wetlands," to implement the FFRMS and update the agency's 8-step process. The FFRMS is a flood resilience standard that is required for federally funded projects and provides a flexible framework to increase resilience against flooding and help preserve the natural values of floodplains and wetlands. A floodplain is any land area that is subject to flooding and refers to geographic features with undefined boundaries. 44 CFR part 9 describes the 8-step process FEMA uses to determine whether a proposed action would be located within or affect a floodplain, and if so, whether and how to continue with or modify the proposed action. Executive Order 11988, as amended, and the FFRMS changed the Executive Branch-wide guidance for defining the floodplain with respect to federally funded projects (*i.e.*, actions involving the use of Federal funds for new construction, substantial improvement, or to address substantial damage to a structure or facility). This proposed rule would ensure that actions subject to the FFRMS are designed to be resilient to both current and future flood risks to minimize the impact of floods on human health, safety, and welfare and to protect Federal investments by reducing the risk of flood loss.

*Anticipated Cost and Benefits:* FEMA estimates that this rulemaking would

result in benefits to grant recipients (States, Local, Tribes, Territories, and Individuals) and to FEMA, mostly through the reduction in damage to properties and contents from future floods, potential lives saved, public health and safety benefits, reduced recovery time from floods, and increased community resilience to flooding. FEMA estimates project cost increases for FEMA and grant recipients due to increased elevation or floodproofing requirements of the proposed rule.

*Timetable:*

Action	Date	FR Cite
Proposed Policy: Request for Comments.	10/02/23	88 FR 67697
Proposed Policy: Comment Period End.	12/01/23	
NPRM .....	10/02/23	88 FR 67869
NPRM Comment Period End.	12/01/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Small Entities Affected:* Governmental Jurisdictions, Organizations.

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

*Additional Information:* Docket ID FEMA–2023–0026.

*URL For More Information:* <https://www.regulations.gov>.

*URL For Public Comments:* <https://www.regulations.gov>.

*Agency Contact:* Portia Ross, Office of Environmental and Historic Preservation, Department of Homeland Security, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, Phone: 202 709–0677, Email: [fema-regulations@fema.dhs.gov](mailto:fema-regulations@fema.dhs.gov).

*RIN:* 1660–AB12

**DHS—FEMA**

Final Rule Stage

**106. Individual Assistance Program Equity [1660–AB07]**

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 42 U.S.C. 5155; 42 U.S.C. 5174; 42 U.S.C. 5189a

*CFR Citation:* 44 CFR 206.101; 44 CFR 206.110 to 206.115; 44 CFR 206.117 to 206.119; 44 CFR 206.191.

*Legal Deadline:* None.

*Abstract:* The Federal Emergency Management Agency (FEMA) will publish an interim final rule (IFR) amending its regulations governing the Individual Assistance program to

increase equity by simplifying processes, removing barriers to entry, and increasing eligibility for certain types of assistance under the program. Specifically, the IFR will: Increase eligibility for home repair assistance by amending the definitions and application of the terms safe, sanitary, and functional, allowing assistance for certain accessibility-related items, and amending its approach to evaluating insurance proceeds; allow for the re-opening of the applicant registration period when the President adds new counties to the major disaster declaration; simplify the documentation requirements for continued temporary housing assistance; simplify the appeals process; simplify the process to request approval for a late registration; remove the requirement to apply for a Small Business Administration loan as a condition of eligibility for Other Needs Assistance (ONA); and establish additional assistance under ONA for serious needs, displacement, disaster-damaged computing devices, and essential tools for self-employed individuals. FEMA also makes revisions to reflect changes to statutory authority that have not yet been implemented in regulation, to include provisions for utility and security deposit payments, lease and repair of multi-family rental housing, child care assistance, maximum assistance limits, and waiver authority.

FEMA sought input on regulatory changes to the Individuals and Households Program (IHP) through a Request for Information (RFI), published on April 22, 2021, seeking public input on its programs, regulations, collections of information, and policies to ensure they effectively achieve FEMA's mission in a manner that furthers the goals of advancing equity for all, including those in underserved communities; bolstering resilience from the impacts of climate change, particularly for those disproportionately impacted by climate change; and environmental justice. 86 FR 21325, Apr. 22, 2021.

FEMA held public meetings and extended the comment period on the RFI to ensure all interested parties had sufficient opportunity to provide comments. See "Request for Information on FEMA Programs, Regulations, and Policies; Public Meetings; Extension of Comment Period," 86 FR 30326, June 7, 2021. All relevant comments received in response to the RFI, including those received during the public meetings, have been posted to the public rulemaking docket on the Federal eRulemaking portal at <https://www.regulations.gov/document/FEMA-2021-0011-0001/comment>. Commenters

raised equitable concerns that FEMA will address in this IFR, such as by removing the requirement to apply for the SBA for a loan before receipt of ONA, amending FEMA's habitability standards, increasing assistance for essential tools, simplifying its appeal process, and removing documentation requirements for late registrations. FEMA will seek public comment on this IFR and will carefully consider each comment received to determine whether further changes to FEMA's IHP regulations are needed.

**Statement of Need:** FEMA's IHP regulations have not had a major review and update since section 206 of the Disaster Mitigation Act of 2000 replaced the Individual and Family Grant Assistance Program with the current IHP. Some minor changes to Repair Assistance were completed in 2013, but Congress has passed multiple other laws that have superseded portions of the regulations and created other programs or forms of assistance with no supporting regulations. This IFR will update the IHP regulations now to bring them up to date and address other lessons learned through the course of implementing the IHP in disasters much larger than any previously addressed at the time the regulations were first developed.

**Anticipated Cost and Benefits:** FEMA estimates that this rulemaking would result in an increase in transfer payments from FEMA and States in the form of disaster assistance to individuals and households. It would also result in additional costs to States for familiarization of the rule and to FEMA and applicants for paperwork burden. The rule would ensure disaster assistance is more equitably distributed and assist applicants to more quickly and fully recover from disasters by expanding eligibility for, and access to, certain types of assistance. Lastly, the rulemaking would improve clarity and align FEMA regulations with statutory changes improving the efficiency and the consistency of IHP assistance.

**Timetable:**

Action	Date	FR Cite
Interim Final Rule	12/00/23	

**Regulatory Flexibility Analysis Required:** No.

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

**Additional Information:** Docket ID FEMA–2023–0003.

**Agency Contact:** Kristina McAlister, Supervisory Emergency Management Specialist (Recovery), Department of Homeland Security, Federal Emergency

Management Agency, Individual Assistance Division Recovery Directorate, 500 C Street SW, Washington, DC 20472, Phone: 866 826–8751, Email: [fema-ihp-policy@fema.dhs.gov](mailto:fema-ihp-policy@fema.dhs.gov).  
RIN: 1660–AB07

**DHS—FEMA**

**Long-Term Actions**

**107. National Flood Insurance Program's Floodplain Management Standards for Land Management & Use, & an Assessment of the Program's Impact on Threatened and Endangered Species & Their Habitats [1660–AB11]**

**Priority:** Other Significant.  
**Legal Authority:** 42 U.S.C. 4001 *et seq.*  
**CFR Citation:** 44 CFR 59 to 60.  
**Legal Deadline:** None.

**Abstract:** The Federal Emergency Management Agency (FEMA) issued a Request for Information (RFI) to receive the public's input on revisions to the National Flood Insurance Program's (NFIP) floodplain management standards for land management and use regulations. FEMA's authority under the National Flood Insurance Act requires the agency to, from time to time, develop comprehensive criteria designed to encourage the adoption of adequate State and local measures. The agency will propose regulations to better align the NFIP minimum floodplain management standards with our current understanding of flood risk, flood insurance premium rates, and risk reduction approaches to make communities safer, stronger, and more resilient to increased flooding. As part of the proposed regulations, FEMA is considering revisions to the NFIP minimum floodplain management standards to better protect people and property in a nuanced manner that balances community needs with the national scope of the NFIP. FEMA will also propose opportunities to make these minimum floodplain management standards improve resilience in communities that have been historically underserved. The proposed revisions to the NFIP minimum floodplain management standards will also consider how to advance the conservation of threatened and endangered species and their habitat. The agency is also reviewing ways to further promote enhanced resilience efforts through the Community Rating System.

During the RFI comment period, FEMA held three public meetings and extended the comment period on the RFI to ensure all interested parties had

sufficient opportunity to provide comments. All relevant comments received in response to the RFI have been posted to the public rulemaking docket on the Federal eRulemaking portal at <https://www.regulations.gov/docket/FEMA-2021-0024/comments> and transcripts from the public meetings have also been posted at <https://www.regulations.gov/docket/FEMA-2021-0024/document>. In April 2023, FEMA requested recommendations from the Technical Mapping Advisory Council (TMAC) on modifying the definition of the Special Flood Hazard Area or modifying how it is calculated. In addition, FEMA requested a recommendation from TMAC on how FEMA might consider changing mapping procedures related to when land is filled. These recommendations will assist FEMA in exploring the feasibility of public comments received from the 2021 RFI.

*Statement of Need:* FEMA issued an RFI to seek information from the public on the agency's current floodplain management standards to ensure the agency receives public input to inform any action to revise the NFIP minimum floodplain management standards.

FEMA is re-evaluating the implementation of the NFIP under the Endangered Species Act at the national level. FEMA will propose regulations based on the comments received on this RFI to better align the NFIP minimum floodplain management standards with our current understanding of flood risk, flood insurance premium rates, and risk reduction approaches to make communities safer, stronger, and more resilient to increased flooding.

*Anticipated Cost and Benefits:* FEMA is currently considering the cost and benefit impacts of potential proposed actions.

*Timetable:*

Action	Date	FR Cite
Request for Information.	10/12/21	86 FR 56713
Announcement of Public Meetings.	10/28/21	86 FR 59745
Announcement of Additional Public Meeting; Extension of Comment Period.	11/22/21	86 FR 66329
Request for Information Comment Period End.	01/27/22	
NPRM .....	To Be Determined	

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* None.

*Additional Information:* Docket ID FEMA–2021–0024.

*URL For More Information:* <https://www.regulations.gov>.

*URL For Public Comments:* <https://www.regulations.gov>.

*Agency Contact:* Rachel Sears, Resilience, Department of Homeland Security, Federal Emergency Management Agency, 400 C Street SW, Washington, DC 20472, Phone: 202 646–2977, Email: [fema-regulations@fema.dhs.gov](mailto:fema-regulations@fema.dhs.gov).

*RIN:* 1660–AB11

**BILLING CODE 9110–9B–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Statement of Regulatory Priorities for Fiscal Year 2024

#### Introduction

The Regulatory Plan for the Department of Housing and Urban Development (HUD) for Fiscal Year (FY) 2024 highlights two significant regulations and policy initiatives that HUD seeks to complete during the upcoming fiscal year. As the Federal agency that serves as the nation's housing agency, HUD is committed to ensuring everyone has an affordable, healthy place to live. As a result, HUD plays a significant role in the lives of families and in communities throughout America.

HUD is currently working to meet the goals of its Strategic Plan to: support underserved communities, ensure access to and increase the production of affordable housing, promote homeownership, advance sustainable communities, and strengthen HUD's internal capacity. Under the leadership of Secretary Marcia L. Fudge, HUD is dedicated to implementing the Administration's priorities by setting forth initiatives related to increasing equity and improving customer experience across all HUD programs.

The rules highlighted in HUD's regulatory plan for FY 2023 reflect HUD's efforts to continue its work in building strong and sustainable communities and addressing the housing needs of all Americans. Additionally, HUD notes that the FY 2023 Semiannual Regulatory Agenda includes additional rules that advance the Administration's priorities, including rules to advance racial equity and civil rights and rules to provide economic relief to homeowners and renters.

## HOME Investment Partnerships Program: Program Updates and Streamlining

HUD's HOME Investment Partnerships Program (HOME) provides formula grants to States and units of general local government to fund a wide range of activities to produce and maintain affordable rental and homeownership housing and provides tenant-based rental assistance for low-income and very low-income households.

This rule proposes to revise the current HOME regulations at 24 CFR part 92 to update, simplify, and streamline requirements, better align the program with other Federal housing programs, and implement recent amendments to the HOME statute. Specifically, the proposed changes to the HOME program include significant revisions to the community housing development organization requirements, a change in the approach to HOME rents, simplified requirements for small-scale rental projects, enhanced flexibility in tenant-based rental assistance (TBRA) programs, and simplified provisions and new flexibilities for community land trusts. The proposed rule would also strengthen and expand tenant protections, and create incentives for meeting green building standards in new construction, reconstruction, and rehabilitation of housing.

#### Aggregate Costs and Benefits

Executive Order 12866, as amended, requires the agency to provide its best estimate of the combined aggregate costs and benefits of all regulations included in the agency's Regulatory Plan that will be pursued in fiscal year 2024. HUD expects that neither the total economic costs nor the total efficiency gains will exceed \$200 million for this proposed rulemaking. In fact, the direct economic impact of this rule would be almost entirely within the HOME program. In other words, the proposed changes would affect what participating jurisdictions do with the HOME funds they receive from HUD and how projects that accept this funding source can operate. Many of the policy adjustments proposed would only have a practical impact if participating jurisdictions choose to participate in HOME-funded activities that are affected by the updated policies.

#### Statement of Need

The HOME program is authorized by title II of the Cranston-Gonzalez National Affordable Housing Act ("NAHA") (42 U.S.C. 12721 *et seq.*).

Title II of NAHA has not been significantly revised since the HOME program was last reauthorized by Congress in 1992. The constraints of the prescriptive statutory authority of title II of NAHA limit the scope of changes that the Department can propose to the HOME program regulations. Working within these limitations, the Department conducted a comprehensive review of title II of NAHA and current HOME program regulations to determine whether previously unrecognized opportunities might exist to revise current regulatory provisions. In creating the proposed rule, the Department focused on its commitment to equity and wealth-building and considered input from stakeholders on the most challenging aspects of administering and using HOME funds to provide affordable housing. This proposed rule is necessary to reduce the burden and increase flexibility for participating jurisdictions and other program participants, while adhering to statutory intent and requiring responsible management of State and local HOME programs.

This proposed rule also incorporates changes made by the Housing Opportunity Through Modernization Act of 2016 (HOTMA) and recent amendments to the HOME statute.

*Alternatives:* An alternative to promulgating this rule would be to maintain HUD’s existing regulations governing the HOME program. However, doing so would mean failing to fully benefit from the advantages of streamlining, updating, and simplifying our regulations. It would also mean that HUD would fail to adjust its HOME regulations to be fully consistent with HOTMA and recent amendments to the HOME statute.

*Risks:* This proposed rule would impose tenant protections that may not be currently applicable to other affordable housing funding sources (e.g., the Low-Income Housing Tax Credit program). This could result in some project owners and developers becoming hesitant to include HOME funds in the capital funding stack of affordable housing projects. Additionally, this proposed rule would make updates throughout the HOME regulation, including significant updates to a number of sections within the regulation. This could lead to a partially challenging transitional period for participating jurisdictions and other stakeholders as they learn and implement the new regulations into their policies and procedures.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/2023	

*Regulatory Flexibility Analysis Required:* No.  
*Small Entities Affected:* No.  
*Government Levels Affected:* Local, State.  
*Federalism Affected:* No.  
*Energy Affected:* No.  
*International Impacts:* No.

**Section 184 Indian Home Loan Guarantee Program**

Section 184 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) (12 U.S.C. 1715z–13a), as amended, authorizes the Section 184 Indian Home Loan Guarantee Program (Section 184 Program) to improve access to private financing for Native American families, Tribes, and Tribally Designated Housing Entities (TDHEs) by providing a loan guarantee to financial organizations who lend to them.

This rule would modernize and enhance the regulations governing the Section 184 Program. Through the Section 184 Program, HUD guarantees home mortgage loans made to Native American borrowers in certain areas. The Section 184 Program facilitates homeownership and improves access to capital in Native American communities.

Since its inception in 1994, the number of loans guaranteed under the Section 184 Program has increased significantly but its regulations have never been substantially revised.

In 2015, the HUD Office of Inspector General (OIG), audited the Section 184 Program and recommended that HUD develop and implement policies and procedures for monitoring and evaluating the Section 184 Program, standardize monthly delinquency reports, deny payments to lenders for claims on loans that have material underwriting deficiencies, take enforcement actions against certain lenders, and ensure that only underwriters that are approved by HUD are underwriting Section 184 loans. This rule is part of the improvements to the Section 184 Program that HUD is pursuing to address the findings in the audit.

In developing this rule, HUD engaged in robust consultation with Tribes consistent with HUD’s Tribal Consultation policy. As early as 2018, prior to drafting the proposed rule, HUD held eleven in-person Tribal consultation sessions to outline HUD’s vision for the rule and obtain feedback from the tribes. As HUD completed

drafts of various subparts of the regulation, HUD shared these drafts with Tribes and held three additional in-person consultations to solicit Tribal feedback on each subpart of the proposed rule. During this time, HUD also held two in-person Tribal consultations and two national teleconferences to review the draft proposed rule. In addition to the Tribal consultation sessions held prior and during the drafting of the proposed rule, HUD conducted ten additional consultations during the proposed rule public comment period. HUD held six regional consultation sessions and four national consultation sessions between December 2022 and March 2023. During these consultation sessions, HUD continued to solicit input and answered questions participants had about the proposed rule.

The regulations proposed in this rule, drafted in consideration of the public comments and tribal consultations, would strengthen and comprehensively modernize the operation of the Section 184 Program. Specifically, this rule would make the Section 184 Program sustainable, protect Borrowers, address weaknesses identified by OIG, provide clarity for new and existing Direct Guarantee and Non-Direct Guarantee Lenders, and reduce unreasonable claim payment requests from Servicers. Many of the procedures and policy proposed by the proposed rule adopt industry standards and best practices and do not differ from existing HUD guidance or current practice within the Section 184 Program, which are often documented in HUD guidance such as “PIH Notices” and “Dear Lender Letters”.

**Aggregate Costs and Benefits**

Executive Order 12866, as amended, requires the agency to provide its best estimate of the combined aggregate costs and benefits of all regulations included in the agency’s Regulatory Plan that will be pursued in FY 2022. HUD expects that neither the total economic costs nor the total efficiency gains will exceed \$100 million. Expanding oversight, improving loan origination quality, enhancing loss mitigation and foreclosure prevention, and implementing new claims procedures will all help to ensure the fiscal stability of the Section 184 Loan Guarantee Fund. While most of the requirements and policies in the proposed regulations mirror existing practices within the Program, some are expected to have a marginal economic impact on mortgagees, Tribes, and borrowers. These impacts could impose slightly greater administrative costs on

participating lenders and shift some risk from the Fund to participating lenders.

### Statement of Need

Since its inception, the number of loans guaranteed under the Section 184 Program has significantly increased. At the same time, the program regulations have never been substantially revised. This rule helps to address housing challenges that Native American households continue to face, particularly: overcrowding and a lack of affordable housing in tribal areas; and access to mortgage credit outside of tribal area.

In 2015, the OIG recommended that HUD develop and implement policies and procedures for monitoring and evaluating the Section 184 Program, standardize monthly delinquency reports, deny payments to lenders for claims on loans that have material underwriting deficiencies, take enforcement actions against certain lenders, and ensure that only underwriters that are approved by HUD are underwriting Section 184 loans. This rule provides additional structure to the Section 184 Program and is part of the OIG's corrective action plan.

**Alternatives:** An alternative to promulgating this rule would be to maintain HUD's existing regulations and practices concerning the Program. However, doing so would ignore the OIG's recommendations and pose a greater risk to the Section 184 Loan Guarantee Fund and the Program, as demand for the Program has significantly increased since its inception.

**Risks:** This rule could slightly increase the administrative costs for lenders that participate in the Program and dissuade some lenders from participating in the Program. However, in the long-term, enhanced loan origination and loss mitigation and foreclosure prevention options will help to strengthen the vitality of the Program; thus, making the Program more attractive for lenders.

### Timetable:

Action	Date	FR Cite
NPRM .....	12/21/2022	87 FR 78324
NPRM Comment Period End.	3/17/2023	
Final Rule .....	03/00/2024	

**Regulatory Flexibility Analysis**  
Required: No.

**Small Entities Affected:** No.

**Government Levels Affected:** No.

**Federalism Affected:** No.

**Energy Affected:** No.

**International Impacts:** No.

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## UNITED STATES DEPARTMENT OF THE INTERIOR

### Fall 2023 Regulatory Plan

#### Introduction

The U.S. Department of the Interior (Department) is the principal steward of our Nation's public lands and resources, including many of our cultural treasures. The Department serves as trustee to Native Americans, Alaska Natives, and Federally Recognized Tribes and is responsible for our ongoing relationships with the Island Territories under U.S. jurisdiction and the freely associated States. Among the Department's many responsibilities is managing more than 500 million surface acres of Federal land, which constitutes approximately 20 percent of the Nation's land area, as well as approximately 700 million subsurface acres of Federal mineral estate, and more than 2.5 billion acres of submerged lands on the Outer Continental Shelf (OCS).

In addition, the Department protects and recovers endangered species; protects natural, historic, and cultural resources; provides scientific and other information about those resources; and manages water projects that are an essential lifeline and economic engine for many communities.

Hundreds of millions of people visit Department-managed lands each year to take advantage of a wide range of recreational pursuits—including camping, hiking, hunting, fishing, and various other forms of outdoor recreation—and to learn about our Nation's history. Each of these activities supports local communities and their economies. The Department also provides access to Federal lands and offshore areas for the development of energy, minerals, and other natural resources that generate billions of dollars in revenue.

In short, the Department plays a central role in how the United States stewards its public lands, ensures environmental protections, pursues environmental justice, honors the nation-to-nation relationship with Tribes and the special relationships with other Indigenous people and the insular areas.

### Regulatory and Deregulatory Priorities

To help advance the Secretary of the Interior's (Secretary) commitment to honoring the Nation's trust responsibilities and to conserve and

manage the Nation's natural resources and cultural heritage, the Department's regulatory and deregulatory priorities in the coming year will focus on:

- Tackling the Climate Crisis, Strengthening Climate Resiliency, and Facilitating the Transition to Renewable Energy;

- Upholding Trust Responsibilities to Federally Recognized American Indian and Alaska Native Tribes, Restoring Tribal Lands, and Protecting Natural and Cultural Resources, Advancing Equity and Supporting Underserved Communities; and

- Investing in Healthy Lands, Waters, and Local Economies and Strengthening Conservation of the Nation's Lands, Waters, and Wildlife.

- Promoting Equitable and Meaningful Participation in the Regulatory Process

*Tackling the Climate Crisis, Strengthening Climate Resiliency, and Facilitating the Transition to Renewable Energy*

The Biden-Harris administration remains committed to combatting climate change and reducing greenhouse gas emissions while improving public health, protecting the environment, and ensuring access to clean air and water. Under this administration, the Department has been a key leader in tackling the climate crises. Pursuant to Executive Order (E.O.) 13990 "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," (signed on Jan. 20, 2021) and E.O. 14008, "Tackling the Climate Crisis at Home and Abroad," (signed January 27, 2021), the Department has advanced multiple policy and regulatory efforts to reduce climate pollution; improve and increase adaptation and resilience to the impacts of drought, wildfire, and extreme weather; address current and historic environmental injustice; protect public health; and conserve Department-managed lands and waters.

The historic Infrastructure Investment and Jobs Act of 2021 (BIL) and the Inflation Reduction Act (IRA), which President Biden signed respectively on November 15, 2021, and August 16, 2022, will enable transformational outcomes on these clean energy and resilience priorities while driving the creation of good-paying union jobs. In referring to the BIL, Secretary Haaland said, "The Interior Department is hard at work to deliver these critical investments from the President's Investing in America agenda into the hands of American communities as quick as we can, and we're making tremendous progress."

In accordance with E.O.s 13990 and 14008, as well as E.O. 14052, “Implementation of the Infrastructure Investment and Jobs Act,” (signed on Nov. 15, 2021), several bureaus within the Department are pursuing regulatory actions to implement these administration priorities, including steps 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. On January 30, 2023 (88 FR 5968), BOEM proposed a rule, the “Renewable Energy Modernization Rule” (1010–AE04). As proposed, the rule facilitates development of offshore renewable energy and promotes U.S. energy independence in a safe and environmentally sound manner that provides a fair return to U.S. taxpayers.

Similarly, the Bureau of Land Management (BLM) plans to update its regulations for onshore rights-of-way, leasing, and operations related to all activities associated with renewable energy. On June 16, 2023 (88 FR 39726), the BLM proposed the rule, “Rights-of-way, Leasing, and Operations for Renewable Energy” (1004–AE78). This

rule aims to improve permitting activities and processes to facilitate increased renewable energy production on public lands.

To advance the deployment of clean energy infrastructure while also meeting obligations to conserve habitats and wildlife, the Department will improve permitting frameworks for bird conservation. On September 30, 2022 (87 FR 59598), the U.S. Fish and Wildlife Service (FWS) proposed the “Eagle Permits; Incidental Take” rule (1018–BE70) to revise the regulations authorizing eagle incidental take and eagle nest take permits to increase the efficiency and effectiveness of permitting, facilitate and improve compliance, and increase the conservation benefit for eagles. The FWS plans to finalize this rule in December 2023.

The FWS will also propose the “Migratory Bird Permits; Authorizing the Incidental Take of Migratory Birds” rule (1018–BF71), to clarify the MBTA’s prohibitions on taking and killing migratory birds and consider establishing a straightforward process to secure authorizations for otherwise prohibited take of migratory birds.

The BIL enables the Department to establish important regulations governing carbon transportation and storage on the OCS. The orderly implementation of negative emissions technologies, such as carbon capture, utilization, and storage, is necessary to reduce hard-to-abate emissions from the industrial sector, which emits nearly 25 percent of all carbon dioxide released into the atmosphere in the United States. In accordance with the BIL, the Bureau of Safety and Environmental Enforcement (BSEE) and BOEM are drafting a joint proposed rule that would address the transportation and geologic sequestration aspects of carbon storage development on the OCS, including leasing, geological, and geophysical exploration for appropriate storage reservoirs; environmental plans and mitigations; facility and infrastructure design and installation; injection operations; long-term site stewardship (*i.e.*, monitoring and response); financial assurance; and safety. BSEE and BOEM plan to publish this proposed rule in December 2023.

The Department is also committed to modernizing its oversight of oil and gas leasing and development to help address the climate and biodiversity crises and to advance environmental justice. In November 2021, the Department released its report on Federal oil and gas leasing and permitting practices, following a review of onshore and offshore oil and gas

programs called for in E.O. 14008. The report identified significant reforms needed to ensure the programs provide a fair return to taxpayers, discourage speculation, hold operators responsible for remediation, and create a more inclusive and just approach to managing public lands and waters. The Department’s “Report on the Federal Oil and Gas Leasing Program” makes a number of specific recommendations to restore balance to these programs, including adjusting royalty rates, pursuing adequate financial assurance for decommissioning liabilities, and prioritizing leasing in areas with known resource potential while avoiding conflicts with other uses.

This past year, the Department proposed regulations to implement important reforms, including the report’s recommendations and reforms included in the IRA regarding oil and gas resources on public lands. On Nov. 30, 2022 (87 FR 73588), the BLM published the proposed rule “Waste Prevention, Production Subject to Royalties, and Resource Conservation 43 CFR parts 3160 and 3170” (1004–AE79), known as the Waste Prevention Rule. On July 24, 2023 (88 FR 47562), the BLM published the proposed rule “Fluid Mineral Leases and Leasing Process” (1004–AE80), known as the Fluid Minerals Rule. The Waste Prevention Rule would prevent waste of Federal resources with an additional benefit of reducing methane emissions in the oil and gas sector. The Fluid Minerals Rule would incorporate many urgent fiscal and programmatic reforms included in the report and IRA, such as updating BLM’s process for leasing to ensure the protection and proper stewardship of the public lands, including potential climate and other impacts associated with oil and gas leasing activities. BLM will finalize these rules to ensure the responsible development of oil and gas on public lands. The BLM also plans to finalize a rule (1004–AE95) to govern the management of surface resources and Special Areas in the National Petroleum Reserve in Alaska. On September 8, 2023, the BLM published the proposed rule “Management and Protection of the National Petroleum Reserve in Alaska” (88 FR 62025), which would improve upon the existing regulations’ procedures to balance oil and gas activities with the protection of surface resources in the NPR–A; assure maximum protection of Special Areas; and protect longstanding subsistence activities.

On June 29, 2023, the BOEM published the proposed rule (1010–AE14) “Risk Management and Financial



Assurance for OCS Lease and Grant Obligations” (88 FR 42136), which would better protect the American taxpayers from shouldering liability for the decommissioning of offshore oil and gas facilities.

BSEE is furthering its mission to promote safety, protect the environment, and conserve resources offshore through vigorous regulatory oversight and enforcement in several rulemaking efforts. Among others, BSEE is working to update its regulations governing oil spills (1014-AA44), offshore pipelines (1014-AA45), and decommissioning requirements on the OCS (1014-AA53).

*Upholding Trust Responsibilities to Federally Recognized American Indian and Alaska Native Tribes Restoring Tribal Lands, and Protecting Natural and Cultural Resources*

Among the Department’s most important responsibilities is its commitment to honor the nation-to-nation relationship between the Federal Government and Tribes. Secretary Haaland is strongly committed to strengthening how the Department carries out its trust responsibilities and to increasing economic development opportunities for Tribes and other historically underserved communities.

To advance the Department’s trust responsibilities, the Bureau of Indian Affairs (BIA) has identified opportunities, following consultation and in close collaboration with Tribal governments, to promote Tribal economic growth and development, and provide clearer and more efficient processes for Tribes that are applying to place land into trust or enter into gaming compacts. For example, BIA is working to remove barriers to the development of renewable energy and other resources in Indian country.

Deb Haaland stated, “Through President Biden’s Investing in America agenda, we’re launching a new program to electrify Indian Country to provide reliable, resilient energy that Tribes can rely on, and advance our work to tackle the climate crisis and build a clean energy future.”

In consultation with Tribes, BIA engaged in efforts to update and improve its regulations governing how it manages land held in trust or in restricted status for Tribes and individual Indians. These efforts included improving the consultation process, identifying best practices, and strengthening relationships with Tribal governments. The BIA also launched a broader review to determine whether any regulatory reforms are needed to facilitate restoration of Tribal lands and

safeguard natural and cultural resources. As a result of these consultations and this review, BIA is preparing a proposed rule, “Agricultural Leasing of Indian Land,” which would revise the regulations governing leases of Indian land for agricultural purposes found at 25 CFR part 162 (1076-AF66). This proposed rule would streamline how leases are obtained and increase the agricultural usage of Indian land.

In December of 2022, BIA published two proposed rules, one regarding the fee-to-trust process and one regarding Class III gaming compacts (87 FR 74334, 87 FR 74916). The updated regulations will provide clearer and more efficient processes for Tribes that are applying to place land into trust or enter into gaming compacts. The land acquisitions rule (1076-AF71) will lead to a more efficient, less cumbersome, and less expensive fee-to-trust process by clarifying the Secretary of the Interior’s authority to take land in trust for Tribes, reducing processing time, and establishing clear decision-making criteria. The rule also places an express focus on taking land into trust for conservation purposes. The Class III gaming rule (1076-AF68) will provide clarity on the criteria the Department would consider when deciding whether to approve these compacts by clarifying boundaries as to allowable topics of negotiation, better defining key terms, and clearly outlining when the Department must review a gaming compact. BIA plans to finalize these rules in February 2024.

The Department is also committed to improving regulations meant to protect sacred and cultural resources. To this end, the Assistant Secretary for Indian Affairs and the Assistant Secretary for Fish and Wildlife and Parks are working with the National Park Service (NPS) to incorporate recommendations from consultation with Tribes on updates to regulations implementing the Native American Graves and Repatriation Act (NAGPRA), 43 CFR part 10 (1024-AE19). This proposed rule, the “Native American Graves Protection and Repatriation Act Systematic Process for Disposition and Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony,” which published on October 18, 2022 (87 FR 63202), would provide for the disposition and repatriation of Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. The updates are intended to simplify and improve the regulatory process for repatriation, rectify provisions in the current regulations that inhibit and effectively prevent

respectful repatriation, and remove the burden on Indian Tribes and Native Hawaiian organizations to initiate the process and add a requirement for museums and Federal agencies to complete the process. The Department expects to publish a final rule titled “Native American Graves Protection and Repatriation Act Systematic Process for Disposition and Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony,” by the end of 2023.

*Advancing Equity and Supporting Underserved Communities*

The Biden-Harris administration and Secretary Haaland recognize and support the goals of advancing equity and addressing the needs of underserved communities. In January 2021, the President signed E.O. 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.” Additionally, On February 17, 2022, Secretary Haaland issued S.O. 3406, “Establishment of a Diversity, Equity, Inclusion and Accessibility Council.” In response to E.O. 13985 and the S.O. 3406, the Department issued its Equity Action Plan on April 14, 2022. The Equity Action Plan is a key part of the Department’s efforts to implement E.O. 13985, which calls on Federal agencies to advance equity by identifying and addressing barriers to equal opportunity that underserved communities may face as a result of Government policies and programs.

On February 16, 2023, the President signed E.O. 14091, “Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.” This order builds upon the previous equity-related Executive orders by extending and strengthening equity-advancing requirements for agencies, and it positions agencies to deliver better outcomes for the American people.

On April 6, 2023, the President signed E.O. 14094, “Modernizing Regulatory Reform.” Section 2 of this E.O. directs agencies to promote equitable and meaningful opportunities for public participation in the rulemaking process by a range of interested or affected parties, including underserved communities.

In Fiscal Year (FY) 2024, the Department will undertake a number of regulatory actions that will assist people who are members of underserved communities by removing barriers, and strengthening equity-advancing requirements.

The BLM (1004–AE60), FWS (1018–BD78), and NPS (1024–AE75) are working on right-of-way (ROW) rules that would streamline and improve efficiencies in the permitting process for electric transmission, distribution facilities, and broadband facilities. The BLM published their proposed rule “Update of the Communications Uses Program, Cost Recovery Fee Schedules, and Section 512 of FLPMA for Rights-of-Way,” on November 7, 2022 (87 FR 67306). The FWS published their revised proposed rule “Streamlining U.S. Fish and Wildlife Service Permitting of Rights-of-Way Across National Wildlife Refuges and Other U.S. Fish and Wildlife Service-Administered Lands” on July 24, 2023 (88 FR 47442). These rules should result in increased services such as broadband connectivity with resulting benefits to underserved communities and visitors to Departmental lands and promote good governance. These proposed rules are expected to implement several provisions of the BIL.

*Investing in Healthy Lands, Waters, and Local Economies and Strengthening Conservation of the Nation’s Lands, Waters, and Wildlife*

The Department’s regulatory agenda will continue to advance the goals of investing in healthy lands, waters, and local economies across the country. These regulatory efforts, which are consistent with the Biden-Harris administration’s America the Beautiful initiative as well as the BIL and IRA which provide the Department with historic resilience and restoration investments, include expanding opportunities for outdoor recreation, such as hunting and fishing, for all Americans; enhancing conservation stewardship; and improving the management of species and their habitat. In a priority effort to advance these goals, the BLM published a proposed rule on April 3, 2023 (88 FR 19583), “Conservation and Landscape Health (1004–AE92),” to advance the bureaus’ mission to manage the public lands for multiple use and sustained yield by prioritizing the health and resilience of ecosystems across those lands. To ensure that health and resilience, the proposed rule provides that the BLM will protect intact landscapes, restore degraded habitat, and make informed management decisions based on science and data.

Through this regulatory plan, the Department affirms the importance of the ESA on the 50th anniversary of its passage in providing a broad and flexible framework to facilitate conservation with a variety of

stakeholders. The Department, through FWS, is committed to working with diverse Federal, Tribal, State, and industry partners not only to protect and recover America’s imperiled wildlife, but to ensure the ESA is helping meet 21st century challenges.

In FY 2023, FWS published numerous proposed and final rules to continue improving implementation of the ESA so that it is clearly and consistently applied, helps recover listed species, and provides the maximum degree of certainty possible to all parties.

Consistent with the steadfast commitment to allowing access to our National Wildlife Refuges (NWRs) and continued efforts to provide hunting and fishing opportunities, the FWS opened, for the first time, two NWRs that had been closed to hunting and sport fishing. In addition, FWS opened or expanded hunting or sport fishing at 16 NWRs and added pertinent station-specific regulations for other NWRs that pertain to migratory game bird hunting, upland game hunting, big game hunting, or sport fishing for the 2022–2023 season. The FWS also changed existing station-specific regulations to reduce regulatory burden on the public and increase access for hunters and anglers on FWS lands and waters. FWS published a proposed rule on June 23, 2023 (88 FR 41058), “National Wildlife Refuge System; 2023–2024 Station-Specific Hunting and Sport Fishing Regulations,” that would expand hunting opportunities on three NWRs.

Per section 2 of E.O. 13990 and the “Fact Sheet: List of Agency Actions for Review,” the Departments of Commerce and the Interior (Departments) initiated a review of the August 27, 2019, final rules, “Endangered and Threatened Wildlife and Plants; Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat,” (1018–BF95) (84 FR 45020) that revised the regulations for adding and removing species from the Lists of Endangered and Threatened Wildlife and Plants and the procedures for designating critical habitat as well as “Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation,” (1018–BC87) (84 FR 44976) that revised portions of the regulations that implement section 7 of the ESA, as amended. In addition, the U.S. Fish and Wildlife Service initiated a review of the August 27, 2019, final rule “Endangered and Threatened Wildlife and Plants; Regulations for Prohibition of Threatened Wildlife and Plants,” (1018–BC97) (84 FR 44753) that removed default protections for threatened species under section 4 of the ESA. On July 5, 2022, the 2019 rules

were vacated and remanded by the U.S. District Court for the Northern District of California.

In response to the court order, the Departments proposed a new rulemaking for FY 2023, “Endangered and Threatened Wildlife and Plants; Listing and Designating Critical Habitat,” which published on June 22, 2023 (88 FR, 40764); “Endangered and Threatened Wildlife and Plants; Revision of Regulations for Interagency Cooperation” (1018–BF96), which published on June 22, 2023 (88 FR 40753); and “Endangered and Threatened Wildlife and Plants; Regulations Pertaining to Endangered and Threatened Wildlife and Plants” (1018–BF88), which published on June 22, 2023 (88 FR 40753). The Departments will work to finalize these rules in 2024.

Under section 4(d) of the Endangered Species Act (ESA), FWS plans to promulgate several species-specific rules to protect threatened species. Of particular note, the FWS issued a proposed rule on November 17, 2022, (87 FR 68975) that would revise the rule for the African elephant (*Loxodonta africana*) promulgated under section 4(d) of the ESA (1018–BG66). The proposed rule intends to increase domestic protection for African elephants in light of the recent rise in global trade of live African elephants from range countries by establishing ESA permit requirements and enhancement standards for trade in live African elephants. This rulemaking action would also clarify the existing enhancement requirement during our evaluation of the application for a permit to import African elephant sport-hunted trophies and incorporate a Party’s designation under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) National Legislation Project into the decision-making process for the import of live African elephants, African elephant sport-hunted trophies, and African elephant parts and products other than ivory. The Department expects to publish a final rule titled “Revision to the Section 4(d) Rule for the African Elephant” in January 2024.

The NPS is also pursuing several regulatory actions under the Department’s direction and in accordance with these goals. These regulatory actions would authorize recreational activities, such as off-road vehicle use, motorized vessels, and bicycling, within appropriate, designated areas of certain National Park System units. These regulations would promote appropriate visitor use while supporting long-term preservation

of park resources and quality visitor experiences.

#### *Promoting Equitable and Meaningful Participation in the Regulatory Process*

In accordance with E.O. 14094, “Modernizing Regulatory Review,” and the OMB Memorandum “Broadening Public Participation and Community Engagement in the Regulatory Process” (July 19, 2023), the Department is committed to informing their regulatory actions through meaningful and equitable opportunities for public input by a range of interested or affected parties, including underserved communities.

For example, to inform the development of and increase awareness of the proposed rulemaking for Carbon Sequestration on the OCS (RIN 1082-AA04), BOEM and BSEE coordinated an extensive outreach strategy to facilitate discussions with representatives from the U.S. interagency, foreign counterpart agencies, Tribal Nations, state agencies, industry, academia, non-governmental organizations, environmental justice groups, labor organizations, and international organizations.

The goals of the outreach strategy were to (1) Facilitate the Bureau’s access to information and perspectives related to offshore carbon sequestration in support of developing a robust and effective rule in a timely manner, and (2) foster relationships with a range of stakeholders that could provide value to the bureaus well beyond the rulemaking effort. The bureaus began implementing the outreach strategy in November 2021, that includes the identification of representatives from each category listed above, introductory and follow-up written exchanges, coordination of listening sessions and informational sharing meetings, and initiation of government-to-government engagements with Tribal Nations.

In another example, on June 22, 2023, the FWS and the National Oceanic and Atmospheric Administration’s National Marine Fisheries Service (NMFS), together the “Services,” proposed two rules to improve and strengthen implementation of the Endangered Species Act (ESA) (RINs 1018-BF95 and 1018-BF96; 88 FR 40764 and 88 FR 40753), and FWS published a separate but related action (RIN 1018-BF88; 88 FR 40742). In accordance with E.O. 13990 (Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis), these rules will ensure the ESA effectively addresses 21st century conservation challenges, such as climate change.

The Services made a concerted effort to engage with the public to inform

these rules. With publication of the proposed rules, the Services issued a news release with a link to a website with additional information about the rules as well as a recording of an informational webinar. Additionally, in coordination with Federal and State agency association partners we reached out via direct email to hundreds of stakeholders with specific registration instructions for virtual information sessions. The Services subsequently delivered a series of six live virtual informational sessions to Federal agencies, State agencies, federally recognized Tribes, Native Hawaiian community leaders, non-governmental organizations and conservation partners, and industry groups. In total, more than 500 people attended the 6 information sessions. Frequently asked questions and a recording of the presentation can be viewed on the website <https://fws.gov/project/endangered-species-act-regulation-revisions>.

The BLM published a proposed rule, “Conservation and Landscape Health,” on April 3, 2023, (1004-AE92, 88 FR 19583) that provides tools for the BLM to improve the resilience of public lands in the face of a changing climate; conserve important wildlife habitat and intact landscapes; plan for development; and better recognize unique cultural and natural resources on public lands. The proposed rule directly responds to the growing need to better manage public lands, waters, and wildlife in the face of devastating wildfires, historic droughts, and severe storms that communities are experiencing across the West, as well as to deepen BLM’s collaborative work with communities, States and Tribes to support responsible development of critical minerals, energy and other resources. The BLM held two virtual and three in-person meetings to provide detailed information about the proposal. Members of the public had an opportunity to ask questions that facilitate a deeper understanding of the proposal. BLM also created a separate web page detailing specific details on the rule: Public Lands Rule | Bureau of Land Management ([blm.gov](https://blm.gov)).

#### **Bureaus and Offices Within the Department of the Interior**

The following is an overview of some of the major regulatory and deregulatory priorities of the Department’s Bureaus and Offices.

##### *Bureau of Indian Affairs*

The BIA enhances the quality of life, promotes economic opportunity, and protects and improves the trust assets of approximately 1.9 million American Indians, Indian Tribes, and Alaska

Natives. The BIA maintains a government-to-government relationship with the 574 Federally Recognized Indian Tribes. The BIA also administers and manages 55 million acres of surface land and 57 million acres of subsurface minerals held in trust by the United States for American Indians and Indian Tribes.

#### **Regulatory and Deregulatory Actions**

In the coming year, BIA will prioritize the following rulemakings:

##### **Procedures for Federal Acknowledgment of Indian Tribes (1076-AF67)**

This proposed rule would respond to recent Federal court decisions holding that the Department did not adequately explain its regulations prohibiting previously denied petitioners for Federal acknowledgment from petitioning again. The Department sought Tribal government input through communication under Executive Order 13175 criteria and the Department’s consultation policy on meaningful communication and collaboration with tribal officials. The Department held Consultation sessions with federally recognized Indian Tribes and a listening session for present, former, and prospective petitioners.

##### **Appeals From Administrative Actions (1076-AF64)**

The proposed rule published on December 1, 2022 (87 FR 73688). This final rule will clarify the processes for appeals of actions taken by officials in the Office of the Assistant Secretary—Indian Affairs, BIA, Bureau of Indian Education, and Office of the Special Trustee for American Indians (collectively, Indian Affairs). The rule advances the purposes of E.O. 14058 to effectively reduce administrative burdens, simplify both public-facing and internal processes to improve efficiency, and empower the Federal workforce to solve problems. The rule streamlines the process for appeals of Tribal government representative decisions, to ensure the continued government-to-government relations with the appropriate Tribal leadership is not unduly interrupted. The Department received Tribal government input through two consultation sessions (February 17, 2022, and February 22, 2022) held under Executive Order 13175 criteria and the Department’s policy on meaningful communication and collaboration with Tribal officials.

#### Mining of the Osage Mineral Estate for Oil and Gas (1076–AF59)

The proposed rule published on January 13, 2023 (88 FR 2430). This final rule will revise the regulations in 25 CFR part 226 to strengthen the BIA's management of the Osage Mineral Estate and improve accounting and production measurement standards; offer consistency in production valuation; address inadequate bonding; support the implementation of electronic reporting systems; enhance accountability; clarify lessees' obligations; prevent waste; promote safe and environmentally sound operations; and protect resource values. The Department received Tribal government input through consultation sessions held pursuant to Executive Order 13175 criteria and the Department's policy on meaningful communication and collaboration with Tribal officials.

#### Land Acquisitions (1076–AF71)

The proposed rule published on December 5, 2022 (87 FR 74334). This final rule will advance the purposes of E.O. 13985 and address the Department's jurisdiction to acquire land in trust for certain Tribes, streamline acquisitions on existing reservations, clarify Tribal jurisdiction, and promote Tribal conservation of lands. The Department received Tribal government input through consultations and listening sessions held under Executive Order 13175 criteria and the Department's policy on meaningful communication and collaboration with Tribal officials.

#### Class III Tribal State Gaming Compact Process (1076–AF68)

The proposed rule published on December 6, 2022 (87 FR 74916). This final rule will provide States and Tribes with a better understanding of how the Department reviews their compacts by codifying longstanding Departmental policy and interpretations of existing case law. The Department received Tribal government input through consultations and listening sessions held under Executive Order 13175 criteria and the Department's policy on meaningful communication and collaboration with Tribal officials.

#### Agricultural Leasing of Indian Land (1076–AF66)

This proposed rule would update provisions addressing leasing of trust or restricted land (Indian land) for agricultural purposes to reflect updates that have been made to business and residential leasing provisions and address outdated provisions. The Department received Tribal government

input through consultations and listening sessions held under Executive Order 13175 criteria and the Department's policy on meaningful communication and collaboration with Tribal officials.

#### Indian Arts and Crafts (1076–AF69)

This proposed rule would modernize the Indian Arts and Crafts Board regulations to better meet the objectives of the Indian Arts and Crafts Act to promote the economic welfare of the Indian Tribes and Indian individuals through the development of Indian arts and crafts and the expansion of the market for the products of Indian art and craftsmanship. The Department is seeking Tribal government input through communication under Executive Order 13175 criteria and the Department's policy on meaningful collaboration with Tribal officials.

#### Bureau of Land Management

The BLM manages more than 245 million acres of public land, known as the National System of Public Lands, primarily located in 12 Western States, including Alaska. The BLM also administers 700 million acres of sub-surface mineral estate throughout the Nation. The agency's mission is to sustain the health, diversity, and productivity of America's public lands for the use and enjoyment of present and future generations.

#### Regulatory and Deregulatory Actions

In the coming year, the BLM will prioritize the following rulemaking actions and highlight its efforts under E.O. 14094:

#### Update of the Communications Uses Program, Right-of-Way Cost Recovery Fee Schedules and Section 512 of FLPMA for Rights-of-Way (1004–AE60)

The BLM published its proposed rule on November 7, 2022 (87 FR 67306). This final rule will streamline and improve efficiencies in the communications uses program, update the cost recovery fee schedules for ROW work activities, and include provisions governing the development and approval of operating plans and agreements for ROWs for electric transmission and distribution facilities. Communications uses, such as broadband, are a subset of ROW activities authorized under FLPMA, as amended. Cost recovery fees apply to most ROW activities authorized under either FLPMA or the Mineral Leasing Act of 1920, as amended. This proposed rule would also implement vegetation management requirements included in the Consolidated Appropriations Act,

2018 (codified at 43 U.S.C. 1772) to address fire risk from and to powerline ROWs on public lands and national forests. The regulatory amendments would also codify statutory requirements regarding review and approval of utilities maintenance plans, liability limitations, and definitions of hazard trees and emergency conditions. The proposed rule was highlighted on the BLM's website with links to comment options, FAQs, and direct links to the rule. We plan to do the same for the final rule.

#### Rights-of-Way, Leasing and Operations for Renewable Energy (1004–AE78)

The BLM published this proposed rule on June 16, 2023 (88 FR 39726). This final rule will revise BLM's regulations for ROWs, leasing, and operations related to all activities associated with renewable energy. The Energy Act of 2020 and E.O. 14008 prioritize the Department's need to improve permitting activities and processes to facilitate increased renewable energy production on public lands. BLM held three virtual informational meetings over the course of the comment period. Additionally, the rule was highlighted on the BLM's website with links to comment options, FAQs, and direct links to the rule.

#### Waste Prevention, Production Subject to Royalties, and Resource Conservation (1004–AE79)

This proposed rule published on November 30, 2022 (87 FR 73588). The final rule will update BLM's regulations governing the waste of natural gas through venting, flaring, and leaks on onshore Federal and Indian oil and gas leases. The proposed rule would address the priorities associated with E.O. 14008. The proposed rule was highlighted on the BLM's website with links to comment options, FAQs, and direct links to the rule. We plan to do the same for the final rule.

#### Fluid Mineral Leases and Leasing Process (1004–AE80)

This proposed rule published on July 24, 2023 (88 FR 47562). This final rule will revise BLM's oil and gas regulations to update the fees, rents, royalties, and bonding requirements related to oil and gas leasing, development, and production. The final rule will also update BLM's process for leasing to ensure the protection and proper stewardship of the public lands, including potential climate and other impacts associated with oil and gas activities. This rule will implement provisions of the IRA regarding oil and gas resources on public lands. BLM will

hold five informational meetings (Two virtual, three in-person) over the course of the comment period. Additionally, the rule was highlighted on the BLM's website with links to comment options, FAQs, and direct links to the rule. We plan to do the same for the final rule.

#### Closure and Restriction Orders (1004-AE89)

This proposed rule would help BLM to better protect persons, property, and public lands and resources by allowing the agency to close or restrict the use of public lands in a timelier manner. The rule would also make BLM's regulations more consistent with other Federal land management agencies' closure and restriction authorities. The proposed rule was highlighted on the BLM's website with links to comment options, FAQs, and direct links to the rule. We plan to do the same for the final rule.

#### Conservation and Landscape Health (1004-AE92)

On April 3, 2023, the BLM published a proposed rule (88 FR 19583) to clarify and support the principles of multiple use and sustained yield in the management of the public lands pursuant to FLPMA and other relevant authorities. This final rule will provide an overarching framework governing multiple resource areas to ensure land health and sustained yield. This rule affirms the important role of restoration and conservation actions in building and maintaining sustainable land management practices to ensure healthy and productive ecosystems for current and future generations. BLM held five informational meetings (Two virtual, three in-person) over the course of the comment period. Additionally, the rule was highlighted on the BLM's website with links to comment options, FAQs, and direct links to the rule.

#### Management and Protection of the National Petroleum Reserve in Alaska (1004-AE95)

This final rule will assure maximum protection of Special Areas in the NPR-A pursuant to and consistent with the provisions of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 303; 42 U.S.C. 6501 *et seq.*), Alaska National Interest Lands Conservation Act, and other applicable authorities. On September 8, 2023, the BLM published the proposed rule "Management and Protection of the National Petroleum Reserve in Alaska" (88 FR 62025). The proposed rule was highlighted on the BLM's website with links to comment options, FAQs, and direct links to the rule. Additionally, a number of listening sessions will occur.

#### Bureau of Ocean Energy Management

The mission of BOEM is to manage development of U.S. OCS energy and mineral resources in an environmentally and economically responsible way. In accordance with its statutory mandate under Outer Continental Shelf Lands Act (OCSLA), BOEM is committed to implementing its dual mission of promoting the expeditious and orderly development of the Nation's energy resources while simultaneously protecting the marine, human, and coastal environment of the OCS State submerged lands and the coastal communities. Consistent with the policy outlined by the Biden-Harris administration in E.O. 14008, BOEM is reevaluating its programs related to the offshore development of energy and mineral resources. The BOEM is working with the Department to review options for expanding renewable energy production while evaluating alternatives to better protect the lands, waters, and biodiversity of species located within the U.S. exclusive economic zone.

#### Regulatory and Deregulatory Actions

In the coming year, BOEM will prioritize the following rulemaking actions:

#### Renewable Energy Modernization Rule (1010-AE04)

On January 30, 2023, the BOEM proposed the *Renewable Energy Modernization Rule* (88 FR 5968). As proposed, the rule would facilitate development of offshore renewable energy and promotes U.S. energy independence in a safe and environmentally sound manner that provides a fair return to U.S. taxpayers. This proposed rule contains reforms identified by BOEM and recommended by industry, including proposals for incremental funding of decommissioning accounts; more flexible geophysical and geotechnical survey submission requirements; streamlined approval of meteorological buoys; revised project verification procedures; and greater clarity regarding safety requirements.

#### Risk Management and Financial Assurance for OCS Lease and Grant Obligations (1010-AE14)

The BOEM has reconsidered the financial assurance policies expressed in the joint proposed rule (85 FR 65904) issued with BSEE (1082-AA02) and has determined that it would be appropriate to issue a new rule that will better protect the American taxpayers from shouldering liability for the decommissioning of offshore oil and gas facilities. On June 29, 2023, the BOEM

published the *Risk Management and Financial Assurance for OCS Lease and Grant Obligations* (88 FR 42136), which proposed provisions that would ensure that facilities no longer needed for oil or gas exploration or development are shut down in a safe and environmentally responsible manner. The rule will modify the evaluation criteria for determining whether oil, gas and sulfur lessees, right-of-use and easement grant holders, and pipeline ROW grant holders may be required to provide bonds or other financial assurance, above the regulatorily prescribed amounts for base bonds, to ensure compliance with their OCS obligations.

#### Carbon Sequestration (1082-AA04)

In accordance with the BIL, BOEM and BSEE are working to jointly propose regulations governing carbon transportation and geologic sequestration aspects of a development, including leasing; siting of storage reservoirs; environmental plans and mitigations; facility and infrastructure design and installation; injection operations; monitoring; incident response; financial assurance; and safety.

#### Protection of Marine Archaeological Resources (1010-AE11)

On February 15, 2023, BOEM published a proposed rule (88 FR 9797) that would revise when lessees and operators would need to conduct archaeological surveys. The proposal put forward provisions that clarify when operators would submit an archaeological report with their applications and clarify the source and extent of the data utilized.

#### Fitness To Operate Standards for Oil and Gas Operators and Lessees on the Outer Continental Shelf (1010-AE21)

This proposed rule would enhance the Secretary's stewardship over the OCS and offshore waters by providing regulations governing the disqualification of operators that have poor environmental or safety performance records. If not properly maintained and operated, oil and gas operations can cause significant safety hazards and environmental harm and prevent other beneficial uses of the OCS (such as fishing and future resource development). Additionally, these safety and environmental issues potentially place American taxpayers at risk to cover future cleanup costs.

#### Bureau of Safety and Environmental Enforcement

The BSEE's mission is to promote safety, protect the environment, and

conserve resources offshore through vigorous regulatory oversight and enforcement. The BSEE is the lead Federal agency charged with improving safety and ensuring environmental protection related to conventional and renewable energy activities on the U.S. OCS.

#### Regulatory and Deregulatory Actions

In the coming year, BSEE will prioritize the following rulemaking actions:

#### Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line Proposed Rule (1014-AA44)

The oil spill response requirements regulations found in 30 CFR part 254 were last updated over 20 years ago (62 FR 13996, Mar. 25, 1997). This proposed rule would update existing regulations to incorporate the latest advancements in spill response and preparedness policies and technologies, as well as lessons learned and recommendations from reports related to the Deepwater Horizon explosion and subsequent oil spill.

#### Revisions to Subpart J—Pipelines and Pipeline Rights-of-Way Proposed Rule (1014-AA45)

This proposed rule would revise specific provisions of the current pipelines and pipeline ROW regulations under 30 CFR 250 subpart J to align with current technology and state-of-the-art safety equipment and procedures, primarily through the incorporation of industry standards.

#### Outer Continental Shelf Lands Act; Operating in High-Pressure and/or High-Temperature (HPHT) Environments (1014-AA49)

Currently, BSEE has no regulations specific to high pressure and/or high temperature (HPHT) projects, requiring it to issue multiple guidance documents clarifying the specific HPHT information prospective operators should submit to BSEE to support the Bureau's programmatic reviews and approvals of such projects. This final rule will formally codify BSEE's existing process for reviewing and approving projects in HPHT environments. BSEE published this proposed rule on May 16, 2022 (87 FR 29790).

#### Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions (RIN 1014-AA52)

This final rule will revise BSEE regulations published in the 2019 final rule "Oil and Gas and Sulfur Operations in the Outer Continental Shelf Blowout

Preventer Systems and Well Control Revisions," 84 FR 21908 (May 15, 2019), for drilling, workover, completion, and decommissioning operations. BSEE published the proposed rule on September 14, 2022 (87 FR 56354).

#### Revisions to Decommissioning Requirements on the OCS (1014-AA53)

This proposed rule would address issues relating to: (1) Idle iron by adding a definition of this term to clarify that it applies to idle wells and structures on active leases; (2) abandonment in place of subsea infrastructure by adding regulations addressing when BSEE may approve decommissioning-in-place instead of removal of certain subsea equipment; and (3) other operational considerations.

#### Office of the Chief Information Officer

The Office of the Chief Information Officer (OCIO) provides leadership to the Department and its Bureaus in all areas of information management and technology (IT). To successfully serve the Department's multiple missions, the OCIO applies modern IT tools, approaches, systems, and products. Effective and innovative use of technology and information resources enables transparency and accessibility of information and services to the public.

In 2023, OCIO finalized the following rule:

#### Personnel Security Files System of Records (1090-AB16)

This final rule was published on February 21, 2023 (88 FR 10479) and revised the Department's Privacy Act regulations at 43 CFR 2.254 to claim exemptions for certain records in the INTERIOR/DOI-45, Personnel Security Files, system of records from one or more provisions of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(k), because of criminal, civil, and administrative law enforcement requirements.

For the coming year, OCIO will prioritize the following rules:

#### Network Security System of Records (1090-AB14)

This proposed rule would revise the Department's Privacy Act regulations at 43 CFR 2.254 to claim exemptions for certain records in the INTERIOR DOI-49, Network Security, system of records from one or more provisions of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(j) and (k), because of criminal, civil, and administrative law enforcement requirements.

#### Investigative Records System of Records (1090-AB27)

A proposed rule was published on July 13, 2023 (88 FR 44748). The final rule would revise the Department's Privacy Act regulations at 43 CFR 2.254 to claim exemptions for certain records in the INTERIOR/OIG-02, Investigative Records, system of records from one or more provisions of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(k), because of criminal, civil or administrative law enforcement requirements.

#### DOI Law Enforcement Records Management System (LERMS) System of Records (1090-AB28)

This proposed rule would revise the Department's Privacy Act regulations at 43 CFR 2.254 to claim exemptions for certain records in the INTERIOR/DOI-10, DOI Law Enforcement Records Management System (LERMS), system of records from one or more provisions of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(k), because of criminal, civil or administrative law enforcement requirements.

#### Office of Acquisition and Property Management

The Office of Acquisition and Property Management (PAM) coordinates Department-wide implementation of Federal policy and regulations for acquisition; and real, personal, and museum property. The PAM also directs activities in other essential areas including motor vehicle fleet management, space management, energy efficiency, water conservation, renewable energy programs, and capital planning for real and personal property assets.

For the coming year, PAM will prioritize the following rules:

#### Department of the Interior Acquisition Regulation, Governance Titles (1090-AB25)

The PAM proposes changes to the Department of the Interior Acquisition Regulation to update its nomenclature to align with recent changes to agency procurement governance. The senior GS-1102 contracting subject matter expert in a Department Bureau or Office would be designated as the Head of the Contracting Activity (formerly designated as the Bureau Procurement Chief). The Senior Executive who is accountable for the contracting activity would be designated as the Bureau Procurement Executive (this position was formerly designated as the Head of the Contracting Activity). These amendments would enable acquisition programs to more efficiently meet the

Department's mission needs and comply with all applicable law and regulations.

#### *Office of Hearings and Appeals*

The Office of Hearings and Appeals (OHA) exercises the delegated authority of the Secretary to conduct hearings and decide appeals from decisions made by the Bureaus and Offices of the Department. The OHA provides an impartial forum for parties who are affected by the decisions of the Department's Bureaus and Offices to obtain independent review of those decisions. The OHA also handles the probating of Indian trust estates, ensuring that individual Indian interests in allotted lands, their proceeds, and other trust assets are conveyed to the decedents' rightful heirs and beneficiaries.

For the coming year, OHA will prioritize the following rule:

#### **Office of Hearings and Appeals (OHA) Rule (1094-AA57)**

This proposed rule will update outdated provisions, make process improvements, and provide a more modernized hearings and appeals process for proceedings before OHA. This is a comprehensive proposal to provide a more efficient process for OHA and the parties who appear before it, including external stakeholders and Departmental bureaus. The rule will build upon the Direct Final Rule to incorporate a new electronic filing and docket management system into OHA's processes and will update a number of other procedural rules. Included in this proposed rule are comprehensive changes to special rules for the Interior Board of Land Appeals, Departmental Cases Hearings Division, and the Director's office. Other provisions address specific needs of the Interior Board of Indian Appeals and the Probate Hearings Division. OHA conducted informal outreach and plans to hold Tribal consultation sessions.

In 2023, OHA finalized the following rules:

#### **Practices Before the Department of Interior (1094-AA56)**

On March 16, 2023, OHA's Final Rule became effective to amend existing regulations to update office addresses for hearings and appeals purposes, to allow the OHA Director to issue interim orders in emergency circumstances, and to allow the OHA Director to issue standing orders to improve OHA's service to the public and the parties by modernizing its processes.

#### **Technical Corrections to Updates to American Indian Probate Regulations (1094-AA55)**

On June 20, 2023 (88 FR 39768), OHA published correcting amendments in a final rule to update the regulations governing probate of property that the United States holds in trust or restricted status for American Indians.

#### *Office of Natural Resources Revenue*

The Office of Natural Resources Revenue (ONRR) is responsible for collecting, accounting for, and disbursing revenues from Federal and Indian energy and mineral leases. The ONRR operates nationwide and is primarily responsible for the timely and accurate collection, distribution, and accounting of revenues associated with mineral and energy production.

In 2023, ONRR completed the following rules:

#### **Partial Repeal of Consolidated Federal Oil & Gas and Federal & Indian Coal Reform Final Rule (1012-AA34)**

On July 21, 2023, ONRR reissued certain regulations for the valuation of Federal and Indian coal to implement a court order that vacates the coal valuation portions of a 2016 rule. These republished regulations implement the court's order by recodifying the regulations that were in effect prior to the vacated 2016 rule.

In the coming year, ONRR will prioritize the following rulemaking actions:

#### **ONRR Designation Form for Payment Responsibility (1012-AA33)**

This proposed rule would amend ONRR's regulations and revise its form for designating a designee for a Federal oil and gas lease. This action would open a 60-day comment period to allow interested parties to comment on the proposed rule and its information collection requirements.

#### *Office of Restoration and Damage Assessment (ORDA)*

ORDA oversees the Department's Natural Resource Damage Assessment and Restoration (NRDAR) Program whose mission is to restore natural resources injured as a result of oil spills or hazardous substance releases into the environment. In partnership with affected state, tribal and Federal trustee agencies, damage assessments are conducted which are the first step toward resource restoration and used to provide the basis for determining restoration needs that address the public's loss and use of natural resources. Once the damages are assessed, legal settlements are

negotiated, or legal actions are taken against the responsible parties for the spill or release. Funds from these settlements are then used to restore the injured resources.

#### **Natural Resource Damages for Hazardous Substances—RIN (1090-AB26)**

In January 2023, ORDA issued an Advanced Notice of Proposed Rulemaking (ANPRM) to revise part of the CERCLA NRDAR Regulations Type A procedures. These procedures allow trustees to use a standardized and simplified methodology for performing Injury Determination, Quantification and Damage Determination that requires minimal field observation. Current Type A procedures are limited to certain environments when claims are less than \$100,000 and are based on outdated computer models and software with extremely limited current utility. Revisions would account for modeling advances for different environments and to provide methodologies that are not technology specific and could be used into the future without additional revisions. Public comments were received on this ANPRM in March 2023. Based on the comments received, ORDA is proceeding to issue a Notice of Proposed Rulemaking (NPRM) this fall.

In the upcoming year, ORDA will review the public comments received on the NPRM and then utilizing those comments, will issue a final rule revising the Type A procedures which are part of the CERCLA NRDAR Regulations.

#### *Office of Surface Mining Reclamation and Enforcement*

The Office of Surface Mining Reclamation and Enforcement (OSMRE) was created by the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The OSMRE works with States and Tribes to ensure that citizens and the environment are protected during coal mining and that the land is restored to beneficial use when mining is finished. The OSMRE and its partners are also responsible for reclaiming and restoring lands and water degraded by mining operations before 1977. The OSMRE focuses on overseeing the State programs and developing new tools to help the States and Tribes get the job done.

The OSMRE also works with colleges and universities and other State and Federal agencies to further the science of reclaiming mined lands and protecting the environment, including initiatives to promote planting more trees and restoring much-needed wildlife habitat.



## Regulatory and Deregulatory Actions

For coming year, OSMRE will prioritize the following regulatory actions:

### Ten Day Notices (1029–AC81)

The proposed rule published on April 25, 2023 (88 FR 24944). The rule will amend the existing regulations about when OSMRE sends ten-day notices to State regulatory authorities regarding possible SMCRA violations.

### Emergency Preparedness for Impoundments (1029–AC82)

This rule would incorporate certain aspects of the Federal Guidelines for Dam Safety (FGDS) into OSMRE's existing regulations. These regulations relate to emergency preparedness for impoundments and propose to incorporate the FGDS Emergency Action Plans (EAP) and After-Action Reports (AAR). Also, OSMRE may add new provisions to the regulations to align the classification of impoundments with industry and other Government agency standards.

### U.S. Fish and Wildlife Service

The mission of FWS is to work with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people. FWS provides opportunities for Americans to enjoy the outdoors and our shared natural heritage. FWS also promotes and encourages the pursuit of recreational activities such as hunting and fishing and wildlife observation.

FWS manages a network of 568 NWRs, with at least 1 refuge in each U.S. State and Territory, and with more than 100 refuges close to major urban centers. The Refuge System plays an essential role in providing outdoor recreation opportunities to the American public with more than 67 million annual visits to refuges to hunt, fish, observe or photograph wildlife, or participate in environmental education or interpretation.

The FWS fulfills its responsibilities through a diverse array of programs that:

- Protect and recover endangered and threatened species;
- Monitor and manage migratory birds;
- Restore nationally significant fisheries;
- Enforce Federal wildlife laws and regulate international trade;
- Conserve and restore wildlife habitat such as wetlands;
- Manage and distribute over a billion dollars each year to States, Territories, and Tribes for fish and wildlife conservation;

- Help foreign governments conserve wildlife through international conservation efforts; and
- Fulfill our Federal Tribal trust responsibility.

### Regulations Under the Endangered Species Act

FWS promulgated multiple regulatory actions under the ESA in FY 2023 to prevent the extinction of and facilitate the recovery of both domestic and foreign animal and plant species. These rulemaking actions added species to, removed species from, and reclassified species on the Lists of Endangered and Threatened Wildlife and Plants and designated critical habitat for certain listed species. FWS published these rulemaking documents in accordance with the National Listing Workplan. The Workplan enables FWS to prioritize workloads based on the needs of species that are candidates for regulatory actions under the ESA or those for which FWS has received a petition for rulemaking. The Workplan represents the conservation priorities of FWS based on its review of scientific information and provides greater clarity and predictability about the timing of listing determinations to State wildlife agencies, nonprofit organizations, and other stakeholders and partners. The goal is to encourage proactive conservation so that Federal protections are not needed in the first place.

In FY 2023, FWS published 23 proposed and 28 final rules to list species, reclassify their status under the ESA, or designate critical habitat; 3 proposed and 4 final rules to remove species from the Lists; and 1 proposed and 1 final rule to establish nonessential experimental populations of listed species under the ESA. FWS will publish many more species-specific rulemaking actions under the ESA in FY2024, as described in multiple entries in the Unified Agenda.

In addition, in FY 2023 FWS completed numerous other rulemaking actions, including these:

### Endangered and Threatened Wildlife and Plants; Designation of Experimental Populations (1018–BF98)

On August 2, 2023, final rule (88 FR 42642, July 3, 2023) revised the regulations concerning experimental populations of endangered species and threatened species under the Endangered Species Act (ESA). The rule removed language restricting the introduction of experimental populations to only the species' "historical range" to allow for the introduction of populations into habitat outside of their historical range. To

provide for the conservation of certain species, establishing experimental populations outside of their historical range may be increasingly necessary and appropriate if the habitat's ability to support one or more life-history stages has been reduced due to threats such as climate change or invasive species.

### Regulations To Implement the Big Cat Public Safety Act (1018–BH23)

On June 12, 2023, FWS amended the implementing regulations for the Captive Wildlife Safety Act by incorporating the requirements of the Big Cat Public Safety Act (BCPSA; signed into law on December 20, 2022) (88 FR 38358, June 12, 2023). To further the conservation of certain wildlife species (lions, tigers, leopards, snow leopards, clouded leopards, jaguars, cheetahs, and cougars, or any hybrids thereof), the BCPSA made certain activities with these species unlawful. The BCPSA also required certain entities or individuals to register each such animal with the Service not later than June 18, 2023, to continue to possess these animals.

### Regulatory and Deregulatory Actions for FY 2024

In the coming year, FWS will prioritize the following rulemaking actions:

### Permits for Incidental Take of Eagles and Eagle Nests, Final Rule (1018–BE70)

On September 30, 2022, FWS proposed revisions to regulations authorizing the issuance of permits for eagle incidental take and eagle nest take (87 FR 59598). The purpose of these revisions is to increase the efficiency and effectiveness of permitting, facilitate and improve compliance, and increase the conservation benefit for eagles. FWS proposed continuing to authorize specific permits as well as creating general permits for certain activities under prescribed conditions: qualifying wind-energy generation projects, power line infrastructure, activities that may disturb breeding bald eagles, and bald eagle nest take.

During the public comment period, FWS held four information sessions in webinar format: two for members of federally recognized Native American Tribes and two for the general public. The purpose of each of these sessions was to provide the public with a general understanding of the background for this proposed rulemaking action, activities it would cover, alternative proposals under consideration, and the draft environmental documents for the proposed action.

Migratory Bird Permits; Authorizing the Incidental Take of Migratory Birds, Proposed Rule (1018–BF71)

This proposed rulemaking action would amend FWS regulations by providing definitions to terms used in the Migratory Bird Treaty Act, as amended (MBTA). The proposed rule would clarify that the MBTA's prohibitions on taking and killing migratory birds includes foreseeable, direct taking and killing that is incidental to other activities. The proposed rule would also establish authorizations for otherwise prohibited take of migratory birds.

Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat, Final Rule (1018–BF95)

On June 22, 2023, FWS and the National Marine Fisheries Service (NMFS) proposed to revise portions of our regulations that implement section 4 of the ESA (88 FR 40764). The proposed revisions clarify, interpret, and implement portions of the ESA concerning the procedures and criteria used for listing, reclassifying, and delisting species on the Lists of Endangered and Threatened Wildlife and Plants and designating critical habitat.

After publication of this proposed rule and the two discussed next (RINs 1018–BF96 and 1018–BF88), FWS delivered a series of informational sessions to stakeholders including Federal agencies, State agencies, federally recognized Tribes, Native Hawaiian community leaders, non-governmental organizations, conservation partners, industry groups, and Pacific Islander community leaders. Frequently asked questions and a recording of the presentation can be viewed on the website <https://fws.gov/project/endangered-species-act-regulation-revisions>.

Endangered and Threatened Wildlife and Plants; Interagency Cooperation, Final Rule (1018–BF96)

On June 22, 2023, FWS and NMFS proposed to amend portions of our regulations that implement section 7 of the ESA (88 FR 40753). The Services are proposing these changes to further clarify and improve the interagency consultation processes, while continuing to provide for the conservation of listed species. See description above under RIN 1018–BF95 for public engagement efforts.

Regulations Pertaining to Endangered and Threatened Wildlife and Plants, Final Rule (1018–BF88)

On June 22, 2023, FWS proposed to revise our regulations concerning protections of endangered species and threatened species under the ESA (88 FR 40742). We proposed to reinstate the general application of the “blanket rule” option for protecting newly listed threatened species pursuant to section 4(d) of the Act, with the continued option to promulgate species-specific rules. We also proposed to extend to federally recognized Tribes certain regulatory exceptions currently provided to the employees or agents of the Service and other Federal and State agencies to aid, salvage, or dispose of threatened species. We also requested comments on an additional provision that would extend to federally recognized Tribes the exceptions to prohibitions for threatened species that the regulations currently provide to employees or agents of the Service, NMFS, and State agencies for take associated with conservation-related activities. See description above under RIN 1018–BF95 for public engagement efforts.

Wildlife and Fisheries; Compensatory Mitigation Mechanisms, Proposed Rule (1018–BF63)

FWS will propose to establish regulations covering objectives, standards, and criteria for review and approval of compensatory mitigation programs and projects intended to offset, or compensate for, unavoidable impacts to federally listed, proposed, or at-risk species and designated critical habitat pursuant to the ESA. The proposed rule will advance the purposes of the ESA by promoting the effective, consistent, transparent, and predictable delivery of compensatory mitigation.

Endangered Species Act Section 10 Regulations; Enhancement of Survival and Incidental Take Permits, Final Rule (1018–BF99)

On February 9, 2023, FWS proposed to revise the regulations concerning the issuance of enhancement of survival and incidental take permits under the ESA (88 FR 8380). The purposes were to clarify the appropriate use of these permit types; clarify our authority to issue these permits for non-listed species without also including a listed species; simplify the requirements for enhancement of survival permits by combining safe harbor agreements and candidate conservation agreements with assurances into one agreement type; and

include portions of our policies for safe harbor agreements, candidate conservation agreements with assurances, and habitat conservation plans in the regulations to reduce uncertainty. The proposed regulatory changes are intended to reduce costs and time associated with developing the application materials. We anticipate that these improvements will encourage more engagement in these voluntary programs, thereby generating greater conservation results overall.

The final rule will incorporate and address public comments received in response to the proposed rule and informational webinars held with State agencies and Tribal nations.

Establishment of a Nonessential Experimental Population of Gray Wolf in the State of Colorado, Final Rule (1018–BG79)

On February 17, 2023, FWS proposed to establish a nonessential experimental population (NEP) of the gray wolf (*Canis lupus*) in Colorado, under section 10(j) of the ESA (88 FR 10258). Establishment of this NEP will facilitate the State of Colorado's reintroduction of gray wolves and provide for allowable legal incidental taking of the gray wolf within the NEP area. The best available data indicate that reintroduction of the gray wolf into Colorado is biologically feasible and will promote the conservation of the species.

FWS held four public information meetings during a 60-day public comment period. The final determination will be based on consideration of public comments and peer review received in response to the proposed rule.

Revision to the Section 4(d) Rule for the African Elephant, Final Rule (1018–BG66)

On November 17, 2022, FWS proposed to revise the current regulations for the African elephant (*Loxodonta africana*) promulgated under section 4(d) of the ESA (87 FR 68975). The purposes of this rulemaking action are to: (1) Increase protection for African elephants in response to the recent rise in international trade of live African elephants from range countries by establishing ESA permit requirements and enhancement standards for trade in live African elephants, (2) clarify the existing enhancement requirement during our evaluation of the application for a permit to import African elephant sport-hunted trophies, and (3) incorporate a Party's designation under the Convention on International Trade in Endangered Species of Wild Fauna and

Flora (CITES) National Legislation Project into the decision-making process for the import of live African elephants, African elephant sport-hunted trophies, and African elephant parts and products.

FWS conducted a virtual public hearing on January 5, 2023. The virtual public hearing was conducted in multiple languages, and several foreign countries expressed comments. The comment period for the proposed rule was extended due to comments expressed during the virtual public hearing. In addition to the public hearing, the agency has conducted several calls with foreign countries that have a stake in the proposed rulemaking.

Maintaining the Biological Integrity, Diversity, and Environmental Health of the National Wildlife Refuge System, Proposed Rule (1018–BG78)

FWS will propose to promulgate regulations directing the management of the National Wildlife Refuge System (NWRS) to promote the biological integrity, diversity, and environmental health of all lands and waters under the jurisdiction of the NWRS. These regulations would be based on language in the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, directing the Service to ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans.

National Wildlife Refuge System; Station-Specific Hunting and Sport Fishing Regulations, 2023–24, Final Rule (1018–BG71)

On June 23, 2023, FWS proposed to make additions and revisions to station-specific regulations and expand hunting and sport fishing opportunities for the 2023–24 hunting and sport fishing season (88 FR 41058). This action is part of an annual update for the national wildlife refuge system and the national fish hatchery system that ensures adequate public notice of openings and changes. These changes and openings enhance conservation stewardship and outdoor recreation and improve the management of game species and their habitat. FWS operates hunting and sport fishing programs on refuges to implement congressional directives to facilitate compatible priority wildlife-dependent recreational opportunities. Although hatcheries are not part of the national wildlife refuge system, by regulation, the administrative

provisions of refuge regulations are applied to national fish hatchery areas.

FWS coordinated closely with the Association of Fish and Wildlife Agencies when developing the proposed rule. FWS also engaged with stakeholder groups through the Hunting and Wildlife Conservation Council for input on hunting and fishing programs on FWS lands and waters.

#### *National Park Service*

The NPS preserves the natural and cultural resources and values within 425 units of the National Park System encompassing more than 85 million acres of lands and waters for the enjoyment, education, and inspiration of this and future generations. The NPS also cooperates with partners to extend the benefits of resource conservation and outdoor recreation throughout the United States and the world.

#### *Regulatory and Deregulatory Actions*

In 2023, NPS completed the following rulemakings:

Mount Rainier National Park; Fishing (1024–AE66)

This final rule which published on January 20, 2023 (88 FR 3659), removed from the Code of Federal Regulations special fishing regulations for Mount Rainier National Park, including those that restrict the take of nonnative species. Instead, the National Park Service will publish closures and restrictions related to fishing in the Superintendent's Compendium for the park. This action helps implement a 2018 Fish Management Plan that aims to conserve native fish populations and restore aquatic ecosystems by reducing or eliminating nonnative fish.

In the coming year, NPS will prioritize the following rulemaking actions:

Native American Graves Protection and Repatriation Act Systematic Process for Disposition and Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony (1024–AE19)

This final rule will revise the NAGPRA implementing regulations. On October 18, 2022, the NPS published the proposed rule “Native American Graves Protection and Repatriation Act Systematic Process for Disposition and Repatriation of Native American Human Remains, Funerary Objects, Sacred Objects, and Objects of Cultural Patrimony,” (87 FR 63202). This rule eliminates ambiguities, corrects inaccuracies, simplifies excessively burdensome and complicated requirements, clarifies timelines, and

removes offensive terminology in the existing regulations that have inhibited the respectful repatriation of most Native American human remains. This rule will simplify and improve the regulatory process for repatriation and thereby advance the goals of racial justice, equity, and inclusion. The Department received Tribal government input through consultations and listening sessions held under Executive Order 13175 criteria and the Department's policy on meaningful communication and collaboration with Tribal officials.

Alaska; Hunting and Trapping in National Preserves (1024–AE70)

This rule would amend NPS regulations for sport hunting and trapping in national preserves in Alaska. This rule would prohibit certain harvest practices, including bear baiting; and prohibit predator control or predator reduction on national preserves.

#### *Bureau of Reclamation*

The Bureau of Reclamation's (Reclamation) mission is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. To accomplish this mission, Reclamation employs management, engineering, and science to achieve effective and environmentally sensitive solutions.

Reclamation's projects provide irrigation water service; municipal and industrial water supply; hydroelectric power generation; water quality improvement; groundwater management; fish and wildlife enhancement; outdoor recreation; flood control; navigation; river regulation and control; system optimization; and related uses. In addition, Reclamation continues to provide increased security at its facilities.

#### *Regulatory and Deregulatory Actions*

In the coming year, Reclamation will prioritize the following rulemaking action:

Public Conduct on Bureau of Reclamation Facilities, Lands and Waterbodies (1006–AA58)

The proposed rule published on February 16, 2023 (88 FR 10070). The final rule, targeted to publish on or before November 2023, will revise existing definitions for the use of aircraft; the possession of firearms, update regulations on camping, swimming, and winter recreation for the wide range of circumstances found across Reclamation; and would clarify the permitting of memorials and

reburials on Reclamation lands. During the proposed rule stage, Reclamation held three tribal consultations in April and May 2022, with invites to all 287 western state Tribes, and Tribal comments were incorporated into this update.

#### DOI—OFFICE OF NATURAL RESOURCES REVENUE (ONRR)

##### Proposed Rule Stage

#### 108. ONRR Designation Form for Payment Responsibility [1012-AA33]

*Priority:* Other Significant.

*Legal Authority:* 5 U.S.C. 301 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 31 U.S.C. 3335; 31 U.S.C. 3711; 31 U.S.C. 3716 to 3718; 31 U.S.C. 3720A; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; 43 U.S.C. 1801 *et seq.*

*CFR Citation:* None.

*Legal Deadline:* None.

*Abstract:* ONRR proposes to amend its regulations and revise its form for designating a designee for a Federal oil and gas lease. This action opens a 60-day comment period to allow interested parties to comment on the proposed rule and its information collection requirements.

*Statement of Need:* ONRR proposes to amend its regulations and revise its form for designating a designee for a Federal oil and gas lease. This action opens a 60-day comment period to allow interested parties to comment on the proposed rule and its information collection requirements.

*Summary of Legal Basis:* 5 U.S.C. 301 *et seq.*, 30 U.S.C. 181 *et seq.*, 30 U.S.C. 351 *et seq.*, 30 U.S.C. 1001 *et seq.*, 30 U.S.C. n1701 *et seq.*, 31 U.S.C. 3335, 31 U.S.C. 3711, 31 U.S.C. 3716 to 3718, 31 U.S.C. 3720A, 31 U.S.C. n9701, 43 U.S.C. 1301 *et seq.*, 43 U.S.C. 1331 *et seq.*, and 43 U.S.C. 1801 *et seq.*

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/00/23	
NPRM Comment Period End.	01/00/24	

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Agency Contact:* Luis Aguilar, Regulatory Specialist, Department of the Interior, Office of Natural Resources Revenue, Denver Federal Center West, 6th Avenue and Kipling Street, Building 85, MS 64400B, Denver, CO 80225,

*Phone:* 303 231-3418, *Email:* [luis.aguilar@onrr.gov](mailto:luis.aguilar@onrr.gov).

*RIN:* 1012-AA33

#### DOI—BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT (BSEE)

##### Proposed Rule Stage

#### 109. Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line Proposed Rule [1014-AA44]

*Priority:* Other Significant.

*Legal Authority:* Federal Water Pollution Control Act, 33 U.S.C. 1321; Oil Pollution Act of 1990, 33 U.S.C. 2701 *et seq.*; Outer Continental Shelf Lands Act, 42 U.S.C. 1331 *et seq.*

*CFR Citation:* 30 CFR 254 (proposed rewrite of 254).

*Legal Deadline:* None.

*Abstract:* This proposed rule would identify opportunities for updating Oil Spill Response Requirements regulations, in 30 CFR part 254, last updated 22 years ago (62 FR 13996, Mar. 25, 1997). This proposed rule would codify industry best practices, BSEE policy, and regulatory guidance for oil spill response planning and operations. This proposed rule would also streamline the oil spill response planning requirements, clarify equipment and operational capabilities, and address requirements from other applicable laws and technological advancements to reflect oil spill response best practices and advance safety and protection of the environment.

*Statement of Need:* This proposed rule would identify opportunities for updating Oil Spill Response Requirements regulations, in 30 CFR part 254, last updated 22 years ago (62 FR 13996, Mar. 25, 1997). This proposed rule would codify industry best practices, BSEE policy, and regulatory guidance for oil spill response planning and operations.

*Summary of Legal Basis:* Federal Water Pollution Control Act, 33 U.S.C. 1321, Oil Pollution Act of 1990, 33 U.S.C. 2701 *et seq.*, Outer Continental Shelf Lands Act, 42 U.S.C. 1331 *et seq.*

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/23	
NPRM Comment Period End.	03/00/24	

*Regulatory Flexibility Analysis*

*Required:* No.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Agency Contact:* Kirk Malstrom, Chief, Regulations and Standards Branch, Department of the Interior, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Sterling, VA 20166, *Phone:* 703 787-1751, *Fax:* 703 787-1555, *Email:* [kirk.malstrom@bsee.gov](mailto:kirk.malstrom@bsee.gov).

*RIN:* 1014-AA44

#### DOI—BSEE

#### 110. Revisions to Subpart J—Pipelines and Pipeline Rights-of-Way Proposed Rule [1014-AA45]

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

*Legal Authority:* 43 U.S.C. 1331 to 1356a, Outer Continental Shelf Lands Act

*CFR Citation:* Not Yet Determined.

*Legal Deadline:* None.

*Abstract:* This proposed rule would identify opportunities for improving safety, environmental protections, and equipment reliability, within the Pipelines and Pipeline Rights-of-Way regulations under 30 CFR 250 subpart J. This rule would incorporate several guidance documents and conditions of approval and update industry standards incorporated by reference into the regulations. This rulemaking rule would result in an up-to-date set of pipeline regulations that reflect current industry practices and BSEE policies that address topics such as pipeline permitting, design, installation, maintenance, inspections, and decommissioning.

*Statement of Need:* This proposed rule would identify opportunities for improving safety, environmental protections, and equipment reliability, within the Pipelines and Pipeline Rights-of-Way regulations under 30 CFR 250 subpart J. This rule would incorporate several guidance documents and conditions of approval and update industry standards incorporated by reference into the regulations. This rulemaking rule would result in an up-to-date set of pipeline regulations that reflect current industry practices and BSEE policies that address topics such as pipeline permitting, design, installation, maintenance, inspections, and decommissioning.

*Summary of Legal Basis:* 43 U.S.C. 1331 to 1356a, Outer Continental Shelf Lands Act.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/24	
NPRM Comment Period End.	03/00/24	

*Regulatory Flexibility Analysis**Required:* No.*Small Entities Affected:* Businesses.*Government Levels Affected:* None.

*Agency Contact:* Kirk Malstrom, Chief, Regulations and Standards Branch, Department of the Interior, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Sterling, VA 20166, *Phone:* 703 787-1751, *Fax:* 703 787-1555, *Email:* kirk.malstrom@bsee.gov.

*RIN:* 1014-AA45**DOI—BSEE**

Final Rule Stage

**111. Outer Continental Shelf Lands Act; Operating in High-Pressure and/or High-Temperature (HPHT) Environments [1014-AA49]***Priority:* Other Significant.

*Legal Authority:* Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 to 1356a

*CFR Citation:* Not Yet Determined.*Legal Deadline:* None.

*Abstract:* This rule will formally codify BSEE's existing process for reviewing and approving projects in high pressure and/or high temperature (HPHT) environments. Currently, BSEE reviews and approves HPHT projects under its existing regulations. Based on these regulations, BSEE issued multiple guidance documents clarifying the specific HPHT information prospective operators should submit to BSEE to support the bureau's programmatic reviews and approvals of such projects.

*Statement of Need:* This rule will formally codify BSEE's existing process for reviewing and approving projects in high pressure and/or high temperature (HPHT) environments. Currently, BSEE reviews and approves HPHT projects under its existing regulations. Based on these regulations, BSEE issued multiple guidance documents clarifying the specific HPHT information prospective operators should submit to BSEE to support the bureau's programmatic reviews and approvals of such projects.

*Summary of Legal Basis:* Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331 to 1356a.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/16/22	87 FR 29790
NPRM Comment Period End.	07/01/22	
Final Action .....	11/00/23	
Final Action Effective.	01/00/24	

*Regulatory Flexibility Analysis**Required:* No.*Small Entities Affected:* Businesses.*Government Levels Affected:* None.

*Agency Contact:* Kirk Malstrom, Chief, Regulations and Standards Branch, Department of the Interior, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Sterling, VA 20166, *Phone:* 703 787-1751, *Fax:* 703 787-1555, *Email:* kirk.malstrom@bsee.gov.

*RIN:* 1014-AA49**DOI—ASSISTANT SECRETARY FOR LAND AND MINERALS MANAGEMENT (ASLM)**

Proposed Rule Stage

**112. Carbon Sequestration [1082-AA04]**

*Priority:* Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

*Legal Authority:* Pub. L. 117-58*CFR Citation:* Not Yet Determined.

*Legal Deadline:* Final, Statutory, November 15, 2022, Public Law 117-58.

The Infrastructure Investment and Jobs Act of 2021 (Pub. L. 117-58) mandates that a new regulation be published within 12 months from enactment of the legislation on November 15, 2021.

*Abstract:* The proposed rulemaking would address the transportation and geologic sequestration aspects of a development, including leasing; siting of storage reservoirs; environmental plans and mitigations; facility and infrastructure design and installation; injection operations; monitoring; incident response; financial assurance; and safety. The Infrastructure Investment and Jobs Act of 2021 directed the Department to establish regulations intended to initiate OCS activities to accomplish carbon sequestration. This proposed joint rulemaking between the Bureau of Ocean Energy management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE) would establish new regulations to implement processes in support of safe and environmentally responsible carbon sequestration activities on the OCS.

*Statement of Need:* The proposed rulemaking would address the transportation and geologic sequestration aspects of a development, including leasing; siting of storage reservoirs; environmental plans and mitigations; facility and infrastructure design and installation; injection operations; monitoring; incident response; financial assurance; and safety. The Infrastructure Investment

and Jobs Act of 2021 directed the Department to establish regulations intended to initiate Outer Continental Shelf (OCS) activities to accomplish carbon sequestration. This proposed joint rulemaking between the Bureau of Ocean Energy management (BOEM) and the Bureau of Safety and Environmental Enforcement (BSEE) would establish new regulations to implement processes in support of safe and environmentally responsible carbon sequestration activities on the OCS.

*Summary of Legal Basis:* Public Law 117-58.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/23	

*Regulatory Flexibility Analysis**Required:* Undetermined.*Small Entities Affected:* Businesses.*Government Levels Affected:*

Undetermined.

*Federalism:* Undetermined.

*Agency Contact:* Stacey Noem, Chief, Office of Offshore Regulatory Programs, Department of the Interior, Assistant Secretary for Land and Minerals Management, 456000 Woodland Road, Sterling, VA 20166, *Phone:* 703 787-1222, *Email:* stacey.noem@bsee.gov.

*Related RIN:* Related to 1082-AA04*RIN:* 1082-AA04**DOI—ASSISTANT SECRETARY FOR POLICY, MANAGEMENT AND BUDGET (ASPMB)**

Proposed Rule Stage

**113. Department of the Interior Acquisition Regulation Governance Titles [1090-AB25]***Priority:* Other Significant.*Legal Authority:* 41 U.S.C. 1702

*CFR Citation:* 48 CFR 1.301; 48 CFR 1401.301.

*Legal Deadline:* None.

*Abstract:* The Office of Acquisition and Property Management would propose changes to the Department of the Interior Acquisition Regulation to update its nomenclature to align with recent changes to agency procurement governance. This proposal would enable acquisition programs to more efficiently meet the Department's mission needs and comply with all applicable law and regulations.

*Statement of Need:* This proposed rule would change the Department of the Interior Acquisition Regulations to update its nomenclature to align with recent changes to agency procurement governance. This proposal would enable

acquisition programs to more efficiently meet the Department's mission needs and comply with all applicable law and regulations.

*Summary of Legal Basis:* 41 U.S.C. 1702.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/00/23	
NPRM Comment Period End.	01/00/24	

*Regulatory Flexibility Analysis*

*Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Agency Contact:* Antonia Giammo, Senior Procurement Analyst—Office of Acquisition and Property Management, Department of the Interior, Assistant Secretary for Policy, Management and Budget, 1849 C Street NW, Washington, DC 20240, *Phone:* 202 208–5250, *Email:* antonia\_giammo@ios.doi.gov.

*RIN:* 1090–AB25

## DOI–ASPMB

### 114. Natural Resource Damages for Hazardous Substances [1090–AB26]

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

*Legal Authority:* 42 U.S.C. secs. 9601 et seq. 104, 107, 111 (i), 122  
*CFR Citation:* 40 CFR 300.600; 43 CFR 11.

*Legal Deadline:* None.

*Abstract:* This proposal would update the existing Type A Rule of the CERCLA Natural Resource Damage Assessment and Restoration (NRDAR) regulations so it could be used in different environments and include methodologies which are not technology specific. Adjustments would also be made to the rebuttable presumption for Type A procedures which is currently limited to damages of \$100,000 or less.

*Statement of Need:* This proposed rule would update the existing Type A Rule of the CERCLA Natural Resource Damage Assessment and Restoration (NRDAR) regulations so it could be used in different environments and include methodologies which are not technology specific. Adjustments would also be made to the rebuttable presumption for Type A procedures which is currently limited to damages of \$100,000 or less.

*Summary of Legal Basis:* 42 U.S.C. secs. 9601 et seq., 42 U.S.C. 104, 42 U.S.C. 107, 42 U.S.C. 111 (i), and 42 U.S.C. 122.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	01/19/23	88 FR 3373
ANPRM Comment Period End.	03/20/23	
NPRM .....	11/00/23	
NPRM Comment Period End.	01/00/24	

*Regulatory Flexibility Analysis*

*Required:* No.

*Small Entities Affected:* No.

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

*Agency Contact:* Emily Joseph, Director, Office of Restoration and Damage Assessment, Department of the Interior, Assistant Secretary for Policy, Management and Budget, 1849 C Street NW, Washington, DC 20240, *Phone:* 202 208–4438, *Email:* emily\_joseph@ios.doi.gov.

*Related RIN:* Related to 1090–AB17

*RIN:* 1090–AB26

## DOI–ASPMB

### 115. • Privacy Act Exemption for Interior/DOI–10, DOI Law Enforcement Records Management System (LERMS) [1090–AB28]

*Priority:* Other Significant.

*Legal Authority:* 5 U.S.C. 552a(k)

*CFR Citation:* 43 CFR 2.254.

*Legal Deadline:* None.

*Abstract:* This proposed rule would revise the Department's Privacy Act regulations at 43 CFR 2.254 to claim exemptions for certain records in the INTERIOR/DOI–10, DOI Law Enforcement Records Management System (LERMS), system of records from one or more provisions of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(k), because of criminal, civil or administrative law enforcement requirements.

*Statement of Need:* This proposed rule would revise the Department's Privacy Act regulations at 43 CFR 2.254 to claim exemptions for certain records in the INTERIOR/DOI–10, DOI Law Enforcement Records Management System (LERMS), system of records from one or more provisions of the Privacy Act of 1974 pursuant to 5 U.S.C. 552a(k), because of criminal, civil or administrative law enforcement requirements.

*Summary of Legal Basis:* 5 U.S.C. 552a(k).

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/23	
NPRM Comment Period End.	02/00/24	

*Regulatory Flexibility Analysis*

*Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Agency Contact:* Teri Barnett, Departmental Privacy Officer, Cybersecurity Division, Department of the Interior, 1849 C Street NW, Office of the Chief Information Officer, Room 7112, Washington, DC 20240, *Phone:* 202 208–1943, *Email:* teri\_barnett@ios.doi.gov.

*Related RIN:* Related to 1090–AB02

*RIN:* 1090–AB28

## DOI–ASPMB

Final Rule Stage

### 116. Privacy Act Exemption for Interior/OIG–02 Investigative Records [1090–AB27]

*Priority:* Other Significant.

*Legal Authority:* 5 U.S.C. 552a(k)

*CFR Citation:* 43 CFR 2.254.

*Legal Deadline:* None.

*Abstract:* This proposed rule would amend the DOI Privacy Act regulations at 43 CFR 2.254 to exempt certain records in the INTERIOR/OIG–02, Investigative Records, system of records from one or more provisions of the Privacy Act to protect investigatory records pursuant to 5 U.S.C. 552a(k). In order to claim the exemptions and meet the requirements of the Privacy Act, DOI will publish a Notice of Proposed Rulemaking and a Final Rule in the **Federal Register**.

*Statement of Need:* This proposed rule would amend the DOI Privacy Act regulations at 43 CFR 2.254 to exempt certain records in the INTERIOR/OIG–02, Investigative Records, system of records from one or more provisions of the Privacy Act to protect investigatory records pursuant to 5 U.S.C. 552a(k). In order to claim the exemptions and meet the requirements of the Privacy Act, DOI will publish a Notice of Proposed Rulemaking and a Final Rule in the **Federal Register**.

*Summary of Legal Basis:* 5 U.S.C. 552a(k).

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/13/23	88 FR 44748
NPRM Comment Period End.	09/11/23	
Final Action .....	11/00/23	
Final Action Effective.	11/00/23	

*Regulatory Flexibility Analysis*

*Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

Agency Contact: Teri Barnett, Departmental Privacy Officer, Cybersecurity Division, Department of the Interior, 1849 C Street NW, Office of the Chief Information Officer, Room 7112, Washington, DC 20240, Phone: 202 208–1943, Email: [teri\\_barnett@ios.doi.gov](mailto:teri_barnett@ios.doi.gov).  
RIN: 1090–AB27

**DOI—OFFICE OF HEARINGS AND APPEALS (OHA)**

Proposed Rule Stage

**117. Office of Hearings and Appeals (OHA) Rule [1094–AA57]**

Priority: Other Significant.  
Legal Authority: 5 U.S.C. 301 (2018); 43 U.S.C. 1457c (2018)  
CFR Citation: 43 CFR 4.  
Legal Deadline: None.  
Abstract: The Office of Hearings and Appeals (OHA) proposes a Notice and Comment Rulemaking to modernize and clarify its regulations governing hearings and appeals before the Interior Board of Land Appeals (IBLA), the Interior Board of Indian Appeals (IBIA), the Departmental Cases Hearings Division (DCHD), and the OHA Director. OHA is proposes this regulatory action to update outdated provisions, make process improvements, and provide a more modernized and logical hearings and appeals process.  
Statement of Need: The Office of Hearings and Appeals (OHA) proposes a Notice and Comment Rulemaking to modernize and clarify its regulations governing hearings and appeals before the Interior Board of Land Appeals (IBLA), the Interior Board of Indian Appeals (IBIA), the Departmental Cases Hearings Division (DCHD), and the OHA Director. OHA proposes this regulatory action to update outdated provisions, make process improvements, and provide a more modernized and logical hearings and appeals process.  
Summary of Legal Basis: 5 U.S.C. 301 (2018) and 43 U.S.C. 1457c (2018).  
Timetable:

Action	Date	FR Cite
NPRM .....	11/00/23	
NPRM Comment Period End.	01/00/24	

Regulatory Flexibility Analysis Required: No.  
Small Entities Affected: No.  
Government Levels Affected: Federal, Local, State.  
Agency Contact: Rachel Lukens, Counsel to the Director, Department of the Interior, Office of Hearings and

Appeals, 801 N Quincy Street, #300, Arlington, VA 22203, Phone: 703 223–9934, Email: [rachel\\_lukens@oha.doi.gov](mailto:rachel_lukens@oha.doi.gov).  
RIN: 1094–AA57

**DOI—UNITED STATES FISH AND WILDLIFE SERVICE (FWS)**

Proposed Rule Stage

**118. Wildlife and Fisheries; Compensatory Mitigation Mechanisms [1018–BF63]**

Priority: Other Significant.  
Legal Authority: 16 U.S.C. 1531 et seq.; Pub. L. 116–283  
CFR Citation: 50 CFR 413.  
Legal Deadline: None.  
Abstract: This rulemaking action would address section 329 of the National Defense Authorization Act for Fiscal Year 2021, Objectives, Performance Standards, and Criteria for Use of Wildlife Conservation Banking Programs (NDAA 2021), which states that, to the maximum extent practicable, the regulatory standards and criteria shall maximize available credits and opportunities for mitigation, provide flexibility for characteristics of various species, and apply equivalent standards and criteria to all mitigation banks.  
Statement of Need: This rulemaking action will address section 329 of the National Defense Authorization Act for Fiscal Year 2021, Objectives, Performance Standards, and Criteria for Use of Wildlife Conservation Banking Programs (NDAA 2021), which states that, to the maximum extent practicable, the regulatory standards and criteria shall maximize available credits and opportunities for mitigation, provide flexibility for characteristics of various species, and apply equivalent standards and criteria to all mitigation banks.  
Summary of Legal Basis: 16 U.S.C. 1531 et seq., Pub. L. 116–283.  
Timetable:

Action	Date	FR Cite
ANPRM .....	07/27/22	87 FR 45076
ANPRM Comment Period End.	09/26/22	
NPRM .....	01/00/24	

Regulatory Flexibility Analysis Required: No.  
Government Levels Affected: Federal.  
Agency Contact: Craig Aubrey, Chief, Division of Environmental Review, Ecological Services Program, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS: ES, Falls Church, VA 22041, Phone: 703 358–2442, Fax:

703 358–1800, Email: [craig\\_aubrey@fws.gov](mailto:craig_aubrey@fws.gov).  
RIN: 1018–BF63

**DOI—FWS**

**119. Migratory Bird Permits; Authorizing the Incidental Take of Migratory Birds, Proposed Rule [1018–BF71]**

Priority: Section 3(f)(1) Significant.  
Legal Authority: 16 U.S.C. 703 et seq.  
CFR Citation: 50 CFR 21.  
Legal Deadline: None.  
Abstract: This proposed rulemaking action would amend FWS regulations by providing definitions to terms used in the Migratory Bird Treaty Act, as amended (MBTA). The proposed rule would clarify that the MBTA’s prohibitions on taking and killing migratory birds includes foreseeable, direct taking and killing that is incidental to other activities. The proposed rule would also establish authorizations for otherwise prohibited take of migratory birds.  
Statement of Need: This proposed rulemaking action would amend FWS regulations by providing definitions to terms used in the Migratory Bird Treaty Act, as amended (MBTA). The proposed rule would clarify that the MBTA’s prohibitions on taking and killing migratory birds includes foreseeable, direct taking and killing that is incidental to other activities. The proposed rule would also establish authorizations for otherwise prohibited take of migratory birds.  
Summary of Legal Basis: 16 U.S.C. 703 et seq.  
Timetable:

Action	Date	FR Cite
ANPRM .....	10/04/21	86 FR 54667
ANPRM Comment Period End.	12/03/21	
NPRM .....	11/00/23	
Final Action .....	04/00/24	

Regulatory Flexibility Analysis Required: No.  
Government Levels Affected: None.  
Agency Contact: Jerome Ford, Assistant Director—Migratory Bird Program, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS–MB, Falls Church, VA 22041–3803, Phone: 703 358–1050, Email: [jerome\\_ford@fws.gov](mailto:jerome_ford@fws.gov).  
RIN: 1018–BF71



**DOI—FWS****120. Maintaining the Biological Integrity, Diversity, and Environmental Health of the National Wildlife Refuge System, Proposed Rule [1018–BG78]***Priority:* Other Significant.*Legal Authority:* 5 U.S.C. 301; 16 U.S.C. 460k; 16 U.S.C. 664; 16 U.S.C. 668dd–668ee; 16 U.S.C. 715i; Pub. L. 115–20*CFR Citation:* 50 CFR 29.*Legal Deadline:* None.

*Abstract:* FWS proposes to promulgate regulations directing the management of the National Wildlife Refuge System (NWRS) to promote the biological integrity, diversity, and environmental health of all lands and waters under the jurisdiction of the NWRS. These regulations would be based on language in the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, directing the Service to ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans. FWS has intentionally coordinated with State and Tribal partners to develop the proposed regulations. FWS solicited comments from States through the Association of Fish and Wildlife Agencies (AFWA) and held three meetings with AFWA and State leadership to discuss the proposed regulations. FWS also held two public webinars for Tribal partners across the country to discuss the proposed regulations and to gain their feedback.

*Statement of Need:* FWS proposes to promulgate regulations directing the management of the National Wildlife Refuge System (NWRS) to promote the biological integrity, diversity, and environmental health of all lands and waters under the jurisdiction of the NWRS. These regulations would be based on language in the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, directing the Service to ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans.

*Summary of Legal Basis:* 5 U.S.C. 301, 16 U.S.C. 460k, 16 U.S.C. 664, 16 U.S.C. 668dd–668ee, 16 U.S.C. 715i, and Public Law 115–20.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/00/23	

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* None.

*Agency Contact:* Katherine Harrigan, Sportsmen's Access Coordinator, Department of the Interior, United States Fish and Wildlife Service, Branch of Conservation Policy and Planning, National Wildlife Refuge System, 5275 Leesburg Pike, Falls Church, VA 22041–3803, *Phone:* 703 358–2440, *Email:* katherine\_harrigan@fws.gov.  
*RIN:* 1018–BG78

**DOI—FWS**

Final Rule Stage

**121. Permits for Incidental Take of Eagles and Eagle Nests, Final Rule [1018–BE70]***Priority:* Other Significant.*Legal Authority:* 16 U.S.C. 668 to 668d*CFR Citation:* 50 CFR 22.

*Legal Deadline:* Other, Judicial, September 15, 2021, For submission of an advance notice of proposed rulemaking to OFR.

NPRM, Judicial, September 16, 2022.

Final, Judicial, January 31, 2024.

*Abstract:* FWS will finalize a proposed rule that set forth potential approaches for expediting and simplifying the permit process authorizing incidental take of eagles. The proposed rule would revise the regulations authorizing eagle incidental take and eagle nest take permits to increase the efficiency and effectiveness of permitting, facilitate and improve compliance, and increase the conservation benefit for eagles. The proposed rule would create general eagle permits for certain activities under prescribed conditions in addition to specific eagle permits authorized under current regulations.

*Statement of Need:* FWS will finalize a proposed rule that set forth potential approaches for expediting and simplifying the permit process authorizing incidental take of eagles. The rule will revise the regulations authorizing eagle incidental take and eagle nest take permits to increase the efficiency and effectiveness of permitting, facilitate and improve compliance, and increase the conservation benefit for eagles. The rule will create general eagle permits for certain activities under prescribed conditions in addition to specific eagle permits authorized under current regulations.

*Summary of Legal Basis:* 16 U.S.C. 668 to 668d.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	09/14/21	86 FR 51094
ANPRM Comment Period End.	10/29/21	
NPRM .....	09/30/22	87 FR 59598
NPRM Comment Period Extended.	11/28/22	87 FR 72957
NPRM Comment Period End.	11/29/22	
NPRM Comment Period Extended End.	12/29/22	
Final Action .....	01/00/24	

*Regulatory Flexibility Analysis Required:* No.

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

*Agency Contact:* Dr. Eric L. Kershner, Chief, Division of Conservation, Permits, and Regulations, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS: MB, Falls Church, VA 22041, *Phone:* 703 358–2376, *Fax:* 703 358–2217, *Email:* eric\_kershner@fws.gov.  
*RIN:* 1018–BE70

**DOI—FWS****122. Regulations Pertaining to Endangered and Threatened Wildlife and Plants [1018–BF88]***Priority:* Other Significant.*Legal Authority:* 16 U.S.C. 1531 *et seq.**CFR Citation:* 50 CFR 17.*Legal Deadline:* None.

*Abstract:* Per section 2 of the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O.13990), the Department of the Interior (the Department) initiated a review of the previous rulemaking action with the title, “Endangered and Threatened Wildlife and Plants; Regulations for Prohibitions to Threatened Wildlife and Plants” (84 FR 44753; August 27, 2019) that revised portions of the regulations that address prohibition and protective regulations regarding the conservation of endangered and threatened species of fish, wildlife, and plants. As a result of that review, the Department proposed to revise those regulations (88 FR 40742, June 22, 2023) and after publication of that proposal, delivered a series of informational sessions to stakeholders including: Federal agencies, State agencies, federally recognized Tribes, Native Hawaiian community leaders, non-governmental organizations, conservation partners, industry groups, and Pacific Islander community leaders. FAQs and a recording of the presentation can be viewed on the

website <https://fws.gov/project/Endangered-species-act-regulation-revisions>.

*Statement of Need:* Per section 2 of the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O.13990), the Department of the Interior (the Department) initiated a review of the previous rulemaking action with the title, “Endangered and Threatened Wildlife and Plants; Regulations for Prohibitions to Threatened Wildlife and Plants (84 FR 44753; August 27, 2019) that revised portions of the regulations that address prohibition and protective regulations regarding the conservation of endangered and threatened species of fish, wildlife, and plants. As a result of that review, the Department proposed a new rulemaking.

*Summary of Legal Basis:* 16 U.S.C. 1531 *et seq.*

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/22/23	88 FR 40742
NPRM Comment Period End.	08/21/23	
Final Action .....	04/00/24	

*Regulatory Flexibility Analysis*

*Required:* No.

*Government Levels Affected:* Federal, State.

*Agency Contact:* Carey Galst, Chief, Branch of Listing Policy and Support, Department of the Interior, United States Fish and Wildlife Service, Ecological Services Program, 5275 Leesburg Pike, MS: ES, Falls Church, VA 22041–3803, *Phone:* 703 358–1954, *Fax:* 703 358–1954, *Email:* [carey\\_galst@fws.gov](mailto:carey_galst@fws.gov).

*RIN:* 1018–BF88

**DDOI—FWS**

**123. Regulations for Listing Endangered and Threatened Species and Designating Critical Habitat, Final Rule [1018–BF95]**

*Priority:* Other Significant.

*Legal Authority:* 16 U.S.C. 1531 *et seq.*  
*CFR Citation:* 50 CFR 424.

*Legal Deadline:* None.

*Abstract:* Per section 2 of the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990), and subsequent Fact Sheet: List of Agency Actions for Review, the Departments of Commerce and the Interior (the Departments) initiated a review of the previous rulemaking action with the title,

“Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat” (84 FR 45020; August 27, 2019) that revised the regulations for adding and removing species from the Lists of Endangered and Threatened Wildlife and Plants and clarified procedures for designating critical habitat. As a result of that review, the Departments proposed to revise those regulations (88 FR 40764, June 22, 2023), and after publication of that proposal, delivered a series of informational sessions to stakeholders including: Federal agencies, State agencies, federally recognized Tribes, Native Hawaiian community leaders, non-governmental organizations, conservation partners, industry groups, and Pacific Islander community leaders. FAQs and a recording of the presentation can be viewed on the website <https://fws.gov/project/Endangered-species-act-regulation-revisions>.

*Statement of Need:* Per section 2 of the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990), and subsequent Fact Sheet: List of Agency Actions for Review, the Departments of Commerce and the Interior (the Departments) initiated a review of the previous rulemaking action with the title, “Endangered and Threatened Wildlife and Plants; Regulations for Listing Species and Designating Critical Habitat” (84 FR 45020; August 27, 2019), that revised the regulations for adding and removing species from the Lists of Endangered and Threatened Wildlife and Plants and clarified procedures for designating critical habitat. As a result of that review, the Departments proposed a new rulemaking.

*Summary of Legal Basis:* 16 U.S.C. 1531 *et seq.*

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/22/23	88 FR 40764
NPRM Comment Period End.	08/21/23	
Final Action .....	04/00/24	

*Regulatory Flexibility Analysis*

*Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* Federal, State.

*Agency Contact:* Carey Galst, Chief, Branch of Listing Policy and Support, Department of the Interior, United States Fish and Wildlife Service, Ecological Services Program, 5275 Leesburg Pike, MS: ES, Falls Church,

VA 22041–3803, *Phone:* 703 358–1954, *Fax:* 703 358–1954, *Email:* [carey\\_galst@fws.gov](mailto:carey_galst@fws.gov).

*Related RIN:* Related to 0648–BK47

*RIN:* 1018–BF95

**DOI—FWS**

**124. Endangered and Threatened Wildlife and Plants; Interagency Cooperation [1018–BF96]**

*Priority:* Other Significant.

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

*CFR Citation:* 50 CFR 402.

*Legal Deadline:* None.

*Abstract:* Per section 2 of the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990), and subsequent Fact Sheet: List of Agency Actions for Review, the Departments of Commerce and the Interior (the Departments) initiated a review of the previous rulemaking action with the title, “Endangered and Threatened Wildlife and Plants; Regulations for Interagency Cooperation” (84 FR 44976; August 27, 2019) that revised portions of the regulations that implement section 7 of the Endangered Species Act of 1973, as amended. As a result of that review, the Departments proposed to revise those regulations (88 FR 40753; June 22, 2023), and after publication of that proposal, delivered a series of informational sessions to stakeholders including: Federal agencies, State agencies, federally recognized Tribes, Native Hawaiian community leaders, non-governmental organizations, conservation partners, industry groups, and Pacific Islander community leaders. FAQs and a recording of the presentation can be viewed on the website <https://fws.gov/project/Endangered-species-act-regulation-revisions>.

*Statement of Need:* Per section 2 of the Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (E.O. 13990), and subsequent Fact Sheet: List of Agency Actions for Review, the Departments of Commerce and the Interior (the Departments) initiated a review of the August 27, 2019, final rule (84 FR 44976) that revised portions of the regulations that implement section 7 of the Endangered Species Act of 1973, as amended. As a result of that review, the Departments proposed a new rulemaking.

*Summary of Legal Basis:* 16 U.S.C. 1531 *et seq.*

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/22/23	88 FR 40753
NPRM Comment Period End.	08/21/23	
Final Action .....	04/00/24	

*Regulatory Flexibility Analysis**Required:* No.*Government Levels Affected:* Federal.

*Agency Contact:* Craig Aubrey, Chief, Division of Environmental Review, Ecological Services Program, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS: ES, Falls Church, VA 22041, *Phone:* 703 358–2442, *Fax:* 703 358–1800, *Email:* craig\_aubrey@fws.gov.

*Related RIN:* Related to 0648–BH41, Related to 1018–BC87

*RIN:* 1018–BF96**DOI—FWS****125. Endangered Species Act Section 10 Regulations; Enhancement of Survival and Incidental Take Permits, Final Rule [1018–BF99]***Priority:* Other Significant.*Legal Authority:* 16 U.S.C. 1531 *et seq.**CFR Citation:* 50 CFR 17.*Legal Deadline:* None.

*Abstract:* Pursuant to the Endangered Species Act of 1973 (ESA), this final rule will revise the regulations at 50 CFR part 17 that implement section 10(a)(1)(A) and 10(a)(1)(B) of the ESA. This section pertains to, among other things, permit issuance for take of endangered and threatened wildlife species. This final rule incorporates and addresses public comments received in response to our proposed rule and informational webinars held with State agencies and Tribal nations.

*Statement of Need:* Pursuant to the Endangered Species Act of 1973 (ESA), this final rule will revise the regulations at 50 CFR part 17 that implement section 10 of the ESA. This section pertains to, among other things, permit issuance for take of endangered and threatened wildlife species.

*Summary of Legal Basis:* 16 U.S.C. 1531 *et seq.*

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/09/23	88 FR 8380
NPRM Comment Period End.	04/10/23	
Final Action .....	02/00/24	

*Regulatory Flexibility Analysis**Required:* No.*Government Levels Affected:* Federal.

*Agency Contact:* Elizabeth Maclin, Division of Restoration and Recovery, Department of the Interior, United States Fish and Wildlife Service, Ecological Services, 5275 Leesburg Pike, Falls Church, VA 22041–3803, *Phone:* 703 358–2646, *Fax:* 703 358–1735, *Email:* elizabeth\_maclin@fws.gov.

*RIN:* 1018–BF99**DOI—FWS****126. Revision to the Section 4(d) Rule for the African Elephant, Final Rule [1018–BG66]***Priority:* Other Significant.

*Legal Authority:* 16 U.S.C. 1361 to 1407; 16 U.S.C. 1531 to 1544; 16 U.S.C. 4201 to 4245

*CFR Citation:* 50 CFR 17.40(e).*Legal Deadline:* None.

*Abstract:* This rule will revise the current regulations for the African elephant (*Loxodonta africana*) promulgated under section 4(d) of the Endangered Species Act (ESA). The purposes are to: (1) Increase protection for African elephants in response to the recent rise in international trade of live African elephants from range countries by establishing ESA permit requirements and enhancement standards for trade in live African elephants, (2) clarify the existing enhancement requirement during our evaluation of the application for a permit to import African elephant sport-hunted trophies, and (3) incorporate a Party's designation under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) National Legislation Project into the decisionmaking process for the import of live African elephants, African elephant sport-hunted trophies, and African elephant parts and products. FWS conducted a virtual public hearing on January 5, 2023. The virtual public hearing was conducted in multiple languages, and several foreign countries expressed comments. The comment period for the proposed rule was extended due to comments expressed during the virtual public hearing. In addition to the public hearing, the agency has conducted several calls with foreign countries that have a stake in the proposed rulemaking.

*Statement of Need:* This rule will revise the current regulations for the African elephant (*Loxodonta africana*) promulgated under section 4(d) of the Endangered Species Act (ESA). The purpose is to: (1) Increase protection for African elephants in response to the

recent rise in international trade of live African elephants from range countries by establishing ESA permit requirements and enhancement standards for trade in live African elephants, (2) clarify the existing enhancement requirement during our evaluation of the application for a permit to import African elephant sport-hunted trophies, and (3) incorporate a Party's designation under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) National Legislation Project into the decisionmaking process for the import of live African elephants, African elephant sport-hunted trophies, and African elephant parts and products other than ivory.

*Summary of Legal Basis:* 16 U.S.C. 1361 to 1407, 16 U.S.C. 1531 to 1544, and 16 U.S.C. 4201 to 4245.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/17/22	87 FR 68975
NPRM Comment Period End.	01/23/23	
NPRM Comment Period Extended.	01/17/23	88 FR 2597
NPRM Comment Period Extended End.	03/30/23	
Final Action .....	01/00/24	

*Regulatory Flexibility Analysis**Required:* No.*Government Levels Affected:* None.

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

*Agency Contact:* Naimah Aziz, Manager, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, International Affairs, 5275 Leesburg Pike MS: IA, Falls Church, VA 22041–3808, *Phone:* 571 218–5019, *Email:* naimah\_aziz@fws.gov.

*RIN:* 1018–BG66**DOI—FWS****127. Establishment of a Nonessential Experimental Population of the Gray Wolf in the State of Colorado, Final Rule [1018–BG79]***Priority:* Other Significant.*Legal Authority:* 16 U.S.C. 1531 *et seq.**CFR Citation:* 50 CFR 17.*Legal Deadline:* None.

*Abstract:* FWS will make a final determination on the proposal to establish a nonessential experimental population (NEP) of the gray wolf (*Canis*

*lupus*) in Colorado, under section 10(j) of the Endangered Species Act of 1973, as amended (Act). Establishment of this NEP will facilitate the State of Colorado's reintroduction of gray wolves and provide for allowable legal incidental taking of the gray wolf within the NEP area. The best available data indicate that reintroduction of the gray wolf into Colorado is biologically feasible and will promote the conservation of the species. We held four public information meetings during a 60-day public comment period. This final determination is based on consideration of public comments and peer review received in response to our proposed rule.

**Statement of Need:** FWS will make a final determination on the proposal to establish a nonessential experimental population (NEP) of the gray wolf (*Canis lupus*) in Colorado, under section 10(j) of the Endangered Species Act of 1973, as amended (Act). Establishment of this NEP will facilitate the State of Colorado's reintroduction of gray wolves and provide for allowable legal incidental taking of the gray wolf within the NEP area. The best available data indicate that reintroduction of the gray wolf into Colorado is biologically feasible and will promote the conservation of the species.

**Summary of Legal Basis:** 16 U.S.C. 1531 *et seq.*

**Timetable:**

Action	Date	FR Cite
Notification of Intent to Prepare an EIS.	07/21/22	87 FR 43489
Comment Period End.	08/22/22	
NPRM .....	02/17/23	88 FR 10258
NPRM Comment Period End.	04/18/23	
Notification of Availability of FEIS and ROD.	09/19/23	88 FR 64399
Final Action .....	11/00/23	

**Regulatory Flexibility Analysis Required:** No.

**Government Levels Affected:** Federal, State.

**Agency Contact:** Elizabeth Maclin, Division of Restoration and Recovery, Department of the Interior, United States Fish and Wildlife Service, Ecological Services, 5275 Leesburg Pike, Falls Church, VA 22041–3803, *Phone:* 703 358–2646, *Fax:* 703 358–1735, *Email:* elizabeth\_maclin@fws.gov.

**RIN:** 1018–BG79

**DOI—FWS**

**Completed Actions**

**128. National Wildlife Refuge System; Station-Specific Hunting and Sport Fishing Regulations, 2023–24, Final Rule [1018–BG71]**

**Priority:** Other Significant.

**Legal Authority:** 16 U.S.C. 460k to 460k–4; 16 U.S.C. 668dd to 668ee

**CFR Citation:** 50 CFR 32; 50 CFR 71.

**Legal Deadline:** None.

**Abstract:** This rule revises the FWS station-specific regulations and expands hunting and sport fishing opportunities for the 2023–24 hunting and sport fishing season. This action is part of an annual update for the national wildlife refuge system and the national fish hatchery system that ensures adequate public notice of openings and changes. These changes and openings enhance conservation stewardship and outdoor recreation and improve the management of game species and their habitat. The FWS operates hunting and sport fishing programs on refuges to implement Congressional directives to facilitate compatible priority wildlife-dependent recreational opportunities. Although hatcheries are not part of the national wildlife refuge system, by regulation, the administrative provisions of refuge regulations are applied to national fish hatchery areas. The FWS coordinated closely with the Association of Fish and Wildlife Agencies when developing the rule. The FWS also engaged with stakeholder groups through the Hunting and Wildlife Conservation Council for input on hunting and fishing programs on FWS lands and waters.

**Statement of Need:** This proposed rule would make additions and revisions to station-specific regulations and expand hunting and sport fishing opportunities for the 2023–24 hunting and sport fishing season. This action is part of an annual update for the national wildlife refuge system and the national fish hatchery system that ensures adequate public notice of openings and changes. These changes and openings enhance conservation stewardship and outdoor recreation and improve the management of game species and their habitat. The FWS operates hunting and sport fishing programs on refuges to implement congressional directives to facilitate compatible priority wildlife-dependent recreational opportunities. Although hatcheries are not part of the national wildlife refuge system, by regulation, the administrative provisions of refuge regulations are applied to national fish hatchery areas.

**Summary of Legal Basis:** 16 U.S.C. 460k to 460k–4 and 16 U.S.C. 668dd to 668ee.

**Timetable:**

Action	Date	FR Cite
NPRM .....	06/23/23	88 FR 41058
NPRM Comment Period End.	08/22/23	
Final Action Effective.	10/27/23	
Final Action .....	10/30/23	88 FR 74050

**Regulatory Flexibility Analysis**

**Required:** No.

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

**Agency Contact:** Katherine Harrigan, Sportsmen's Access Coordinator, Department of the Interior, United States Fish and Wildlife Service, Branch of Conservation Policy and Planning, National Wildlife Refuge System, 5275 Leesburg Pike, Falls Church, VA 22041–3803, *Phone:* 703 358–2440, *Email:* katherine\_harrigan@fws.gov.

**RIN:** 1018–BG71

**DOI—NATIONAL PARK SERVICE (NPS)**

**Final Rule Stage**

**129. Native American Graves Protection and Repatriation Act Regulations [1024–AE19]**

**Priority:** Other Significant.

**Legal Authority:** 25 U.S.C. 3001 *et seq.*

**CFR Citation:** 43 CFR 10.

**Legal Deadline:** None.

**Abstract:** This final rule revises the Native American Graves Protection and Repatriation Act (NAGPRA) implementing regulations. The rule eliminates ambiguities, correct inaccuracies, simplifies excessively burdensome and complicated requirements, clarifies timelines, and removes offensive terminology in the existing regulations that have inhibited the respectful repatriation of most Native American human remains. This rule simplifies and improves the regulatory process for repatriation and thereby advances the goals of racial justice, equity, and inclusion. The Department sought Tribal government input through communication under Executive Order 13175 criteria and the Department's consultation policy on meaningful communication and collaboration with tribal officials. The Department held Consultation sessions with federally recognized Indian Tribes and a listening session for present, former, and prospective petitioners.

**Statement of Need:** This rule will revise the Native American Graves

Protection and Repatriation Act (NAGPRA) implementing regulations. The rule will eliminate ambiguities, correct inaccuracies, simplify excessively burdensome and complicated requirements, clarify timelines, and remove offensive terminology in the existing regulations that have inhibited the respectful repatriation of most Native American human remains. This rule will simplify and improve the regulatory process for repatriation and thereby advance the goals of racial justice, equity, and inclusion.

*Summary of Legal Basis:* 25 U.S.C. 3001 *et seq.*

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/18/22	87 FR 63202
NPRM Comment Period Extended.	01/10/23	88 FR 1344
NPRM Comment Period Extended End.	01/31/23	
Final Rule .....	12/00/23	

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* Federal.

*Additional Information:* Since the passage of NAGPRA in 1990, it has been the policy of the United States that human remains of any ancestry must always be treated with dignity and respect. Yet in the last 30 years, less than half of the Native American human remains in collections have been repatriated to their traditional caretakers. The revisions to the existing regulatory requirements will respect the civil rights and sovereignty of Indian Tribes and Native Hawaiians to repatriate their ancestors and cultural items. The rule responds to regular and repeated requests for regulatory revisions and will reduce the regulatory burden on all parties by streamlining requirements in accessible language with clear timelines, removing ambiguity, and improving efficiency. The rule will likely have a positive net benefit, justifying any temporary cost increase.

*URL For More Information:*  
[www.nps.gov/nagpra](http://www.nps.gov/nagpra).

*Agency Contact:* Melanie O'Brien, National NAGPRA Program Manager, Department of the Interior, National Park Service, National NAGPRA Program, 1849 C Street NW, Washington, DC 20240, *Phone:* 202 354-2204, *Email:* [melanie\\_o'brien@nps.gov](mailto:melanie_o'brien@nps.gov).

*RIN:* 1024-AE19

## DOI—NPS

### 130. Alaska; Hunting and Trapping in National Preserves [1024-AE70]

*Priority:* Other Significant.

*Legal Authority:* 54 U.S.C. 100751

*CFR Citation:* 36 CFR 13.

*Legal Deadline:* None.

*Abstract:* This final rule will amend regulations for sport hunting and trapping in national preserves in Alaska. This rule would prohibit certain harvest practices, including bear baiting; and prohibit predator control or predator reduction on national preserves.

*Statement of Need:* This final rule will amend regulations for sport hunting and trapping in national preserves in Alaska. This rule would prohibit certain harvest practices, including bear baiting; and prohibit predator control or predator reduction on national preserves.

*Summary of Legal Basis:* 54 U.S.C. 100751.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/09/23	88 FR 1176
NPRM Comment Period End.	03/10/23	
NPRM Comment Period End Extended.	03/10/23	88 FR 14963
NPRM Comment Period Extended End.	03/27/23	
Final Rule .....	05/00/24	

*Regulatory Flexibility Analysis*

*Required:* Undetermined.

*Government Levels Affected:* Undetermined.

*Agency Contact:* Sarah Creachbaum, Alaska Regional Director, Department of the Interior, National Park Service, 240 W 5th Avenue, Anchorage, AK 99501, *Phone:* 907 644-3510, *Email:* [akr\\_regulations@nps.gov](mailto:akr_regulations@nps.gov).

*RIN:* 1024-AE70

## DOI—BUREAU OF INDIAN AFFAIRS (BIA)

Proposed Rule Stage

### 131. Agricultural Leasing of Indian Land [1076-AF66]

*Priority:* Other Significant.

*Legal Authority:* 25 U.S.C. 380 to 635; 25 U.S.C. 2201 *et seq.*; 25 U.S.C. 3701 *et seq.*; 44 U.S.C. 3101 *et seq.*

*CFR Citation:* 25 CFR 162.

*Legal Deadline:* None.

*Abstract:* This rule would propose to update provisions addressing leasing of trust or restricted land (Indian land) for agricultural purposes to reflect updates

that have been made to business and residential leasing provisions and address outdated provisions.

*Statement of Need:* This rule would update provisions addressing leasing of trust or restricted land (Indian land) for agricultural purposes to reflect updates that have been made to business and residential leasing provisions and address outdated provisions.

*Summary of Legal Basis:* 25 U.S.C. 380 to 635, 25 U.S.C. 2201 *et seq.*, 25 U.S.C. 3701 *et seq.*, and 44 U.S.C. 3101 *et seq.*

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/00/24	

*Regulatory Flexibility Analysis*

*Required:* Undetermined.

*Government Levels Affected:* Tribal.

*Agency Contact:* Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, Department of the Interior, Bureau of Indian Affairs, 1001 Indian School Road NW, Suite 229, Albuquerque, NM 87104, *Phone:* 202 738-6065, *Email:* [oliver.whaley@bia.gov](mailto:oliver.whaley@bia.gov).

*RIN:* 1076-AF66

## DOI—BIA

### 132. Procedures for Federal Acknowledgment of Indian Tribes [1076-AF67]

*Priority:* Other Significant.

*Legal Authority:* 5 U.S.C. 301; 25 U.S.C. 2, 9, 479A-1

*CFR Citation:* 25 CFR 83.

*Legal Deadline:* None.

*Abstract:* This proposed rule would respond to recent Federal court decisions holding that the Department did not adequately explain its regulations prohibiting previously denied petitioners for Federal acknowledgment from petitioning again. The Department sought Tribal government input through communication under Executive Order 13175 criteria and the Department's consultation policy on meaningful communication and collaboration with tribal officials. The Department held Consultation sessions with federally recognized Indian Tribes and a listening session for present, former, and prospective petitioners.

*Statement of Need:* This final rule will update the regulations in response to recent Federal court decisions to address whether previously denied petitioners for Federal acknowledgment may petition again.

*Summary of Legal Basis:* 5 U.S.C. 301, 25 U.S.C. 2, 25 U.S.C. 9, and 25 U.S.C. 479A–1.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/27/22	87 FR 24908
NPRM Comment Period End.	07/06/22	
Second NPRM ....	02/00/24	

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* None.

*Agency Contact:* Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, Department of the Interior, Bureau of Indian Affairs, 1001 Indian School Road, NW, Suite 229, Albuquerque, NM 87104, *Phone:* 202 738–6065, *Email:* oliver.whaley@bia.gov.

George Patton, Department of the Interior, Bureau of Indian Affairs, Indian Affairs—RACA, 1001 Indian School Road NW, Suite 312, Albuquerque, NM 87104, *Phone:* 505 563–3805, *Email:* george.patton@bia.gov.

*RIN:* 1076–AF67

**DOI–BIA**

**133. Indian Arts and Crafts [1076–AF69]**

*Priority:* Other Significant.

*Legal Authority:* 5 U.S.C. 301; 25 U.S.C. 2; 25 U.S.C. 9; 25 U.S.C. 305 *et seq.*

*CFR Citation:* 25 CFR 301; 25 CFR 304; 25 CFR 307 to 310.

*Legal Deadline:* None.

*Abstract:* This proposed rule would modernize the Indian Arts and Crafts Board regulations to better meet the objectives of the Indian Arts and Crafts Act to promote the economic welfare of the Indian Tribes and Indian individuals through the development of Indian arts and crafts and the expansion of the market for the products of Indian art and craftsmanship. The Department is seeking Tribal government input through communication under Executive Order 13175 criteria and the Department's policy on meaningful collaboration with Tribal officials.

*Statement of Need:* This proposed rule would modernize the Indian Arts and Crafts Board regulations to better meet the objectives of the Indian Arts and Crafts Act to promote the economic welfare of the Indian Tribes and Indian individuals through the development of Indian arts and crafts and the expansion of the market for the products of Indian art and craftsmanship.

*Summary of Legal Basis:* 5 U.S.C. 301, 25 U.S.C. 2, 25 U.S.C. 9, and 25 U.S.C. 305 *et seq.*

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/00/24	

*Regulatory Flexibility Analysis*

*Required:* Undetermined.

*Government Levels Affected:* Tribal.

*Agency Contact:* Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, Department of the Interior, Bureau of Indian Affairs, 1001 Indian School Road NW, Suite 229, Albuquerque, NM 87104, *Phone:* 202 738–6065, *Email:* oliver.whaley@bia.gov.

*RIN:* 1076–AF69

**DOI–BIA**

Final Rule Stage

**134. Mining of the Osage Mineral Estate for Oil and Gas [1076–AF59]**

*Priority:* Other Significant.

*Legal Authority:* Pub. L. 59–321; Pub. L. 66–360; Pub. L. 70–919; Pub. L. 75–711

*CFR Citation:* 25 CFR 226.

*Legal Deadline:* None.

*Abstract:* This final rule revises the regulations in 25 CFR part 226 to strengthen the BIA's management of the Osage Mineral Estate and improve accounting and production measurement standards; offer consistency in production valuation; address inadequate bonding; support the implementation of electronic reporting systems; enhance accountability; clarify lessees' obligations; prevent waste; promote safe and environmentally sound operations; and protect resource values. The Department received Tribal government input through consultation sessions held pursuant to Executive Order 13175 criteria and the Department's policy on meaningful communication and collaboration with Tribal officials.

*Statement of Need:* This final rule will revise the regulations in 25 CFR part 226 to advance the purposes of E.O. 14058; and provide for the implementation of electronic royalty and production reporting systems, reducing administrative burdens on operators, purchasers, and the government, and streamlining accounting and reconciliation processes.

*Summary of Legal Basis:* Public Law 59–321, Public Law 66–360, Public Law 70–919, and Public Law 75–711.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/13/23	88 FR 2430
NPRM Comment Period End.	03/17/23	
Final Action .....	03/00/24	

*Regulatory Flexibility Analysis*

*Required:* No.

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

*Agency Contact:* Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, Department of the Interior, Bureau of Indian Affairs, 1001 Indian School Road NW, Suite 229, Albuquerque, NM 87104, *Phone:* 202 738–6065, *Email:* oliver.whaley@bia.gov.

*RIN:* 1076–AF59

**DOI–BIA**

**135. Class III Tribal State Gaming Compact Process [1076–AF68]**

*Priority:* Other Significant.

*Legal Authority:* 5 U.S.C. 301; 25 U.S.C. 2; 25 U.S.C. 9; 25 U.S.C. 479a–1

*CFR Citation:* 25 CFR 293.

*Legal Deadline:* None.

*Abstract:* This final rule will update procedures the Secretary of the Interior (Secretary) uses for reviewing Class III Tribal State Gaming compacts submitted for approval to clarify what law the Secretary applies and make the process more transparent. The Department received Tribal government input through consultations and listening sessions held under Executive Order 13175 criteria and the Department's policy on meaningful communication and collaboration with Tribal officials.

*Statement of Need:* This final rule will improve the transparency of procedures taken by the Secretary of the Interior (Secretary) to review Class III Tribal State Gaming compacts submitted for approval.

*Summary of Legal Basis:* 5 U.S.C. 301, 25 U.S.C. 2, 25 U.S.C. 9, and 25 U.S.C. 479a–1.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/06/22	87 FR 74916
NPRM Comment Period End.	03/01/23	
Final Action .....	02/00/24	

*Regulatory Flexibility Analysis*

*Required:* No.

*Government Levels Affected:* State, Tribal.

*Agency Contact:* Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, Department of the Interior, Bureau of Indian Affairs, 1001 Indian School Road NW, Suite 229, Albuquerque, NM 87104, *Phone:* 202 738–6065, *Email:* oliver.whaley@bia.gov.

George Patton, Department of the Interior, Bureau of Indian Affairs, Indian Affairs—RACA, 1001 Indian School Road NW, Suite 312, Albuquerque, NM 87104, *Phone:* 505 563–3805, *Email:* george.patton@bia.gov.  
*RIN:* 1076–AF68

## DOI—BIA

### 136. Land Acquisitions [1076–AF71]

*Priority:* Other Significant.

*Legal Authority:* R.S. 161, 5 U.S.C. 301; 46 Stat. 1106, as amended; 46 Stat. 1471, as amended; . . .

*CFR Citation:* 25 CFR 151.

*Legal Deadline:* None.

*Abstract:* This rule will advance the purposes of E.O. 13985 and address the Department's jurisdiction to acquire land in trust for certain Tribes, streamline acquisitions on existing reservations, clarify Tribal jurisdiction, and promote Tribal conservation of lands. The Department received Tribal government input through consultations and listening sessions held under Executive Order 13175 criteria and the Department's policy on meaningful communication and collaboration with Tribal officials.

*Statement of Need:* This rule will advance the purposes of E.O. 13985 and address the Department's jurisdiction to acquire land in trust for certain Tribes, streamline acquisitions on existing reservations, clarify Tribal jurisdiction, and promote Tribal conservation of lands.

*Summary of Legal Basis:* R.S. 161, 5 U.S.C. 301, 46 Stat. 1106, as amended, and 46 Stat. 1471, as amended.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/05/22	87 FR 74334
NPRM Comment Period End.	03/01/23	
Final Action .....	02/00/24	

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* Federal, Tribal.

*Agency Contact:* Oliver Whaley, Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, Department of the Interior,

Bureau of Indian Affairs, 1001 Indian School Road NW, Suite 229, Albuquerque, NM 87104, *Phone:* 202 738–6065, *Email:* oliver.whaley@bia.gov.

George Patton, Department of the Interior, Bureau of Indian Affairs, Indian Affairs—RACA, 1001 Indian School Road NW, Suite 312, Albuquerque, NM 87104, *Phone:* 505 563–3805, *Email:* george.patton@bia.gov.  
*RIN:* 1076–AF71

## DOI—BUREAU OF OCEAN ENERGY MANAGEMENT (BOEM)

Proposed Rule Stage

### 137. • Fitness To Operate Standards for Oil and Gas Operators and Lessees on the Outer Continental Shelf [1010–AE21]

*Priority:* Other Significant.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 43 U.S.C. 1331, OCS Lands Act

*CFR Citation:* 30 CFR 550; 30 CFR 556.

*Legal Deadline:* None.

*Abstract:* In response to Executive Order 14008, Tackling the Climate Crisis at Home and Abroad, the Department of the Interior prepared Report on the Federal Oil and Gas Leasing Program. The report stated that the Bureau of Ocean Energy Management, through a new “Fitness to Operate” standard, would establish safety, environmental, and financial responsibilities for companies to meet in order to operate on the U.S. Outer Continental Shelf.

This rule would establish safety, environmental, and financial responsibilities for oil and gas companies to meet in order to operate on the U.S. Outer Continental Shelf.

*Statement of Need:* In response to Executive Order 14008, Tackling the Climate Crisis at Home and Abroad, the Department of the Interior prepared a report on the Federal Oil and Gas Leasing Program. The report stated that the Bureau of Ocean Energy Management, through a new “Fitness to Operate” standard, would establish safety, environmental, and financial responsibilities for companies to meet in order to operate on the U.S. Outer Continental Shelf.

This rule would establish safety, environmental, and financial responsibilities for oil and gas companies to meet in order to operate on the U.S. Outer Continental Shelf.

*Summary of Legal Basis:* 43 U.S.C. 1331, OCS Lands Act.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/00/24	

*Regulatory Flexibility Analysis*

*Required:* Undetermined.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Tribal.

*Federalism:* Undetermined.

*Agency Contact:* Kelley Spence, Department of the Interior, Bureau of Ocean Energy Management, 1849 C Street NW, Washington, DC 20240, *Phone:* 984 298–7345, *Email:* kelley.spence@boem.gov.

*RIN:* 1010–AE21

## DOI—BOEM

Final Rule Stage

### 138. Renewable Energy Modernization Rule [1010–AE04]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 43 U.S.C. 1337(p)

*CFR Citation:* 30 CFR 585.

*Legal Deadline:* None.

*Abstract:* This final rule will clarify BOEM's renewable energy regulations facilitating offshore renewable energy development in a manner that is safe, environmentally sound, and provides fair return to U.S. taxpayers. This action also helps meet commitments of Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, by supporting renewable energy production and in offshore waters.

BOEM received a range of comments on the NPRM during the public comment period. In addition, BOEM held multiple staff-level and Government-to-Government Tribal Consultations. This final rule will address feedback received from public comment and Tribal Consultations.

*Statement of Need:* This final rule will clarify BOEM's renewable energy regulations facilitating offshore renewable energy development in a manner that is safe, environmentally sound, and provides fair return to U.S. taxpayers. This action also helps meet commitments of Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad*, by supporting renewable energy production and in offshore waters.

*Summary of Legal Basis:* 43 U.S.C. 1337(p).

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/30/23	88 FR 5968
NPRM Comment Period End.	03/31/23	



Action	Date	FR Cite
NPRM Comment Period Extension.	04/03/23	88 FR 19578
NPRM Comment Period Extension End.	05/01/23	
Final Rule .....	04/00/24	

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Tribal.  
*Agency Contact:* Karen Thundiyil, Chief, Office of Regulations, Department of the Interior, Bureau of Ocean Energy Management, 1849 C Street NW, Washington, DC 20240, *Phone:* 202 742-0970, *Email:* karen.thundiyil@boem.gov.

*Related RIN:* Merged with 1010-AD89, Merged with 1010-AD91  
*RIN:* 1010-AE04

## DOI—BOEM

### 139. Protection of Marine Archaeological Resources [1010-AE11]

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

*Legal Authority:* NHPA—54 U.S.C. 30101 *et seq.*

*CFR Citation:* 30 CFR 550.

*Legal Deadline:* None.

*Abstract:* This final rule will revise when lessees and operators would need to conduct archaeological surveys. It would clarify when operators would submit an archaeological report with their applications and clarify the source and extent of the data utilized.

*Statement of Need:* This final rule will revise when lessees and operators would need to conduct archaeological surveys. It would clarify when operators would submit an archaeological report with their applications and clarify the source and extent of the data utilized.

*Summary of Legal Basis:* 30 CFR 550.  
*Timetable:*

Action	Date	FR Cite
NPRM .....	02/15/23	88 FR 9797
NPRM Comment Period End.	04/17/23	
Final Rule .....	05/00/24	

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Agency Contact:* Peter Meffert, Regulatory Analyst, Department of the Interior, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, VA 20166, *Phone:* 703 787-1610, *Email:* peter.meffert@boem.gov.  
*RIN:* 1010-AE11

## DOI—BOEM

### 140. Risk Management and Financial Assurance for OCS Lease and Grant Obligations [1010-AE14]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* OCSLA—43 U.S.C. 1331 *et seq.*

*CFR Citation:* 30 CFR 550; 30 CFR 556.

*Legal Deadline:* None.

*Abstract:* This final rule will modify the evaluation criteria for determining whether oil, gas and sulfur lessees, right-of-use and easement grant holders, and pipeline right-of-way grant holders may be required to provide bonds or other financial assurance, above the regulatorily prescribed amounts for base bonds, to ensure compliance with their Outer Continental Shelf obligations.

We held a Government-to-Government consultation with the Indian Tribal Nation during the development of the NPRM and expect to have another consultation on the final rule. This final rule will address feedback received from public comment period and Tribal consultations.

*Statement of Need:* This rule will modify the evaluation criteria for determining whether oil, gas and sulfur lessees, right-of-use and easement grant holders, and pipeline right-of-way grant holders may be required to provide bonds or other financial assurance, above the regulatorily prescribed amounts for base bonds, to ensure compliance with their Outer Continental Shelf obligations.

*Summary of Legal Basis:* OCSLA—43 U.S.C. 1331 *et seq.*

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/29/23	88 FR 42136
NPRM Comment Period Extension.	08/25/23	88 FR 58173
NPRM Comment Period End.	08/28/23	
NPRM Comment Period Extension End.	09/07/23	
Final Rule .....	04/00/24	

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Undetermined.

*Agency Contact:* Kelley Spence, Program Analyst, Department of the Interior, Bureau of Ocean Energy Management, 1849 C Street NW, Washington, DC 20240, *Phone:* 948 298-7345, *Email:* kelly.spence@boem.gov.

*Related RIN:* Split from 1082-AA02  
*RIN:* 1010-AE14

## DOI—OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT (OSMRE)

Proposed Rule Stage

### 141. Emergency Preparedness for Impoundments [1029-AC82]

*Priority:* Other Significant.

*Legal Authority:* 30 U.S.C. 1201

*CFR Citation:* 30 CFR 780; 30 CFR 784; 30 CFR 816; 30 CFR 817.

*Legal Deadline:* None.

*Abstract:* This proposed rule would incorporate certain aspects of the Federal Guidelines for Dam Safety (Federal Guidelines) into OSMRE's existing regulations. This proposed rule would relate to emergency preparedness for impounding structures and propose to include provisions for Emergency Action Plans (EAPs) and After-Action Reports (AARs) that are consistent with the Federal Guidelines. Also, OSMRE may add new provisions to the regulations explaining the EAP and AAR requirements and aligning the classification of impoundments with industry and other government agency standards.

*Statement of Need:* This proposed rule would incorporate certain aspects of the Federal Guidelines for Dam Safety (Federal Guidelines) into OSMRE's existing regulations. This proposed rule would relate to emergency preparedness for impounding structures and propose to include provisions for Emergency Action Plans (EAPs) and After-Action Reports (AARs) that are consistent with the Federal Guidelines. Also, OSMRE may add new provisions to the regulations explaining the EAP and AAR requirements and aligning the classification of impoundments with industry and other government agency standards.

*Summary of Legal Basis:* 30 U.S.C. 1201.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/24	
NPRM Comment Period End.	02/00/24	

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Undetermined.

*Federalism:* Undetermined.

*Agency Contact:* Khalia Boyd, Regulatory Analyst, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW, Washington, DC 20240, *Phone:* 202 208-2823, *Email:* kboyd@osmre.gov.

*RIN:* 1029-AC82

**DOI—OSMRE**

Final Rule Stage

**142. Ten-Day Notices [1029–AC81]***Priority:* Other Significant.*Legal Authority:* Pub. L. 95–87; 30 U.S.C. 1211(c)(2)*CFR Citation:* 30 CFR 733; 30 CFR 842.*Legal Deadline:* None.

*Abstract:* The final rule would amend OSMRE's regulations on ten-day notices that went into effect on December 24, 2020. The final rule would amend the existing rules about when OSMRE sends ten-day notices to State regulatory authorities regarding possible SMCRA violations.

*Statement of Need:* The final rule would amend OSMRE's regulations on ten-day notices that went into effect on December 24, 2020. The final rule would amend the existing rules about when OSMRE sends ten-day notices to State regulatory authorities regarding possible Surface Mining Control and Reclamation Act violations.

*Summary of Legal Basis:* Public Law 95–87 and 30 U.S.C. 1211(c)(2).

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/25/23	88 FR 24944
NPRM Comment Period End.	06/26/23	
Final Action .....	02/00/24	
Final Action Effective.	03/00/24	

*Regulatory Flexibility Analysis**Required:* No.*Small Entities Affected:* No.*Government Levels Affected:* State.

*Agency Contact:* Khalia Boyd, Regulatory Analyst, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW, Washington, DC 20240, *Phone:* 202 208–2823, *Email:* kboyd@osmre.gov.

*RIN:* 1029–AC81**DOI—BUREAU OF RECLAMATION (RB)**

Final Rule Stage

**143. Public Conduct on Bureau of Reclamation Facilities, Lands and Waterbodies [1006–AA58]***Priority:* Other Significant.*Legal Authority:* 43 U.S.C. 373*CFR Citation:* 43 CFR 423.*Legal Deadline:* None.

*Abstract:* The revisions to this rule clarify regulations that maintain law and order and protect persons and

property on Bureau of Reclamation facilities, lands, and waterbodies. The rule revises existing definitions for the use of aircraft and the possession of firearms; updates regulations on camping, swimming, and winter recreation for the wide range of circumstances found across Bureau of Reclamation facilities, lands, and waterbodies; and clarifies the permitting of memorials and reburials on Bureau of Reclamation lands.

*Statement of Need:* This rule will revise existing definitions for the use of aircraft and the possession of firearms; update regulations on camping, swimming, and winter recreation for the wide range of circumstances found across Bureau of Reclamation facilities, lands, and waterbodies; and will clarify the permitting of memorials and reburials on Bureau of Reclamation lands.

*Summary of Legal Basis:* 43 U.S.C. 373.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/16/23	88 FR 10070
NPRM Comment Period End.	04/17/23	
Final Action .....	11/00/23	

*Regulatory Flexibility Analysis**Required:* No.*Small Entities Affected:* No.*Government Levels Affected:* None.

*Agency Contact:* Jill Nagode, Regulatory Contact, Department of the Interior, Bureau of Reclamation, Denver Federal Center, P.O. Box 25007, Building 67, Denver, CO 80225, *Phone:* 303 445–2055, *Email:* jnagode@usbr.gov. *RIN:* 1006–AA58

**DOI—BUREAU OF LAND MANAGEMENT (BLM)**

Proposed Rule Stage

**144. Closure and Restriction Orders [1004–AE89]**

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

*Legal Authority:* 43 U.S.C. 1701 *et seq.*; 43 U.S.C. 315a; 16 U.S.C. 1281c; 16 U.S.C. 877 *et seq.*; 16 U.S.C. 4601–6a; 16 U.S.C. 1241 *et seq.*; 16 U.S.C. 7913; 16 U.S.C. 1338; . . .

*CFR Citation:* None.*Legal Deadline:* None.

*Abstract:* The proposed rule would revise the visitor services regulations to enhance the BLM's ability to issue closure and restriction orders. The proposed rule would also make BLM's

regulations more consistent with other Federal land management agencies' closure and restriction authorities.

*Statement of Need:* This proposed rule would allow the Bureau of Land Management (BLM) to better protect persons, property and public lands and resources by allowing the agency to close or restrict the use of public lands in a more timely manner. The rule would also make the BLM's regulations more consistent with other Federal land management agencies' closure and restriction authorities.

*Summary of Legal Basis:* 43 U.S.C. 1701 *et seq.*, 43 U.S.C. 315a, 16 U.S.C. 1281c, 16 U.S.C. 877 *et seq.*, 16 U.S.C. 4601–6a, 16 U.S.C. 1241 *et seq.*, 16 U.S.C. 7913, and 16 U.S.C. 1338.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/00/23	
Final Action .....	04/00/24	

*Regulatory Flexibility Analysis**Required:* No.*Small Entities Affected:* No.*Government Levels Affected:* None.

*Agency Contact:* Tom Heinlein, Assistant Director, National Landscape Conservation System, Department of the Interior, Bureau of Land Management, 760 Horizon Drive, Grand Junction, CO 81506, *Phone:* 970 256–4954, *Email:* theinlein@blm.gov.

*RIN:* 1004–AE89**DOI—BLM****145. Management and Protection of the National Petroleum Reserve in Alaska (Section 610 Review) [1004–AE95]**

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

*Legal Authority:* Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 to 6508)

*CFR Citation:* 43 CFR subpart 2361.*Legal Deadline:* None.

*Abstract:* This proposed rule would assure maximum protection of Special Areas in the NPR–A pursuant to and consistent with the provisions of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 303; 42 U.S.C. 6501 *et seq.*), Alaska National Interest Lands Conservation Act, and other applicable authorities.

*Statement of Need:* The final rule will assure maximum protection of Special Areas in the NPR–A pursuant to and consistent with the provisions of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 303; 42 U.S.C. 6501 *et seq.*), Alaska National Interest Lands

Conservation Act, and other applicable authorities.

*Summary of Legal Basis:* Naval Petroleum Reserves Production Act of 1976 (42 U.S.C. 6501 to 6508).

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/08/23	88 FR 62025
NPRM Comment Period End.	11/07/23	
Final Action .....	03/00/24	

*Regulatory Flexibility Analysis*

*Required:* Undetermined.

*Government Levels Affected:* Tribal. *Federalism:* This action may have federalism implications as defined in E.O. 13132.

*Agency Contact:* Kyle W. Moorman, Division Chief for Regulatory Affairs and Directives, Department of the Interior, Bureau of Land Management, 1849 C Street NW, Washington, DC 20240, *Phone:* 202 527–2433, *Email:* kmoorman@blm.gov.

*RIN:* 1004–AE95

**DOI—BLM**

Final Rule Stage

**146. Update of the Communications Uses Program, Right-of-Way Cost Recovery Fee Schedules and Section 512 of FLPMA for Rights-of-Way [1004–AE60]**

*Priority:* Other Significant.

*Legal Authority:* 30 U.S.C. 185 and 189; 43 U.S.C. 1733; 43 U.S.C. 1740; 43 U.S.C. 1763

*CFR Citation:* 43 CFR 2800; 43 CFR 2860; 43 CFR 2880; 43 CFR 2920.

*Legal Deadline:* None.

*Abstract:* The BLM is proposing to amend its right-of-way regulations to improve access to broadband communications and update the cost recovery fee schedules for ROW work activities. Additionally, this rule will implement vegetation management requirements to address fire risk from and to power line ROWs on public lands and national forests.

*Statement of Need:* This proposed rule would address issues relating to (1) Idle iron by adding a definition of this term to clarify that it applies to idle wells and structures on active leases; (2) abandonment in place of subsea infrastructure by adding regulations addressing when BSEE may approve decommissioning-in-place instead of removal of certain subsea equipment; and (3) other operational considerations.

*Summary of Legal Basis:* 30 U.S.C. 185 and 189, 43 U.S.C. 1733, 43 U.S.C. 1740, and 43 U.S.C. 1763.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/07/22	87 FR 67306
NPRM Comment Period End.	01/06/23	
Final Action .....	12/00/23	

*Regulatory Flexibility Analysis*

*Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* Federal. *Agency Contact:* Dominica VanKoten, Division Chief, Lands, HQ–35– (Lands, Realty, and Cadastral), Department of the Interior, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, NM 87508, *Phone:* 571 266–9585, *Email:* dvankote@blm.gov.

*Related RIN:* Merged with 1004–AE69  
*RIN:* 1004–AE60

**DOI—BLM**

**147. Rights-of-Way, Leasing and Operations for Renewable Energy [1004–AE78]**

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

*Legal Authority:* 30 U.S.C. ch. 23; 43 U.S.C. 1733; 43 U.S.C. 1740; 43 U.S.C. 1763; 30 U.S.C. 185 and 189; Pub. L. 109–58; Division Z, Pub. L. 116–260; E.O. 14008; . . .

*CFR Citation:* None.

*Legal Deadline:* None.

*Abstract:* The proposed rule would revise the BLM's regulations for rights-of-way, leasing, and operations related to activities associated with solar and wind energy development. The Energy Act of 2020 and section 207 of Executive Order 14008 prioritize the Department of the Interior's need to improve permitting activities and processes to facilitate increased renewable energy permitting and production on public lands.

*Statement of Need:* The principal purpose of these amendments is to facilitate responsible solar and wind energy development on public lands managed by the BLM. The rule will adjust acreage rents and capacity fees for solar and wind energy, provide the BLM with more flexibility in how it processes applications for solar and wind energy development inside designated leasing areas, and update agency criteria on prioritizing solar and wind applications. The rule will also make technical changes, corrections, and clarifications to the existing right-of-way regulations.

*Summary of Legal Basis:* 30 U.S.C. ch. 23, 43 U.S.C. 1733, 43 U.S.C. 1740, 43 U.S.C. 1763, 30 U.S.C. 185 and 189,

Public Law 109–58 Division Z, Public Law 116–260, E.O. 14008.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/16/23	88 FR 39726
NPRM Comment Period End.	08/15/23	
Final Action .....	04/00/24	

*Regulatory Flexibility Analysis*

*Required:* No.

*Government Levels Affected:* Undetermined.

*Agency Contact:* Ben Gruber, Deputy Assistant Director, Energy, Minerals, and Realty Mgmt., Department of the Interior, Bureau of Land Management, 1849 C Street NW, Washington, DC 20240, *Phone:* 951 269–9548, *Email:* begruber@blm.gov.

*RIN:* 1004–AE78

**DOI—BLM**

**148. Waste Prevention, Production Subject to Royalties, and Resource Conservation [1004–AE79]**

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

*Legal Authority:* 30 U.S.C. 181 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1701 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 25 U.S.C. 396; E.O. 13990; E.O. 14008; . . .

*CFR Citation:* None.

*Legal Deadline:* None.

*Abstract:* This rule proposes updates to the BLM's existing rules governing the venting and flaring of natural gas (methane) from onshore Federal and Indian oil and gas leases. The rulemaking will address the priorities associated with Executive Order 14008 to address tackling the climate crisis. Per Executive Order 13990, the rule will address reducing methane emissions in the oil and gas sector.

*Statement of Need:* The final rule will ensure that companies do not waste valuable Federal mineral resources in their extraction processes and would further address the priorities associated with Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad.”

*Summary of Legal Basis:* 30 U.S.C. 181 *et seq.*, 30 U.S.C. 1701 *et seq.*, 43 U.S.C. 1701 *et seq.*, 25 U.S.C. 396a *et seq.*, 25 U.S.C. 2101 *et seq.*, 25 U.S.C. 396, E.O. 13990, and E.O. 14008.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/30/22	87 FR 73588
NPRM Comment Period End.	01/30/23	

Action	Date	FR Cite
Final Action .....	01/00/24	

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Agency Contact:* Ben Gruber, Deputy Assistant Director, Energy, Minerals, and Realty Mgmt., Department of the Interior, Bureau of Land Management, 1849 C Street NW, Washington, DC 20240, Phone: 951 269–9548, Email: [begruber@blm.gov](mailto:begruber@blm.gov).  
RIN: 1004–AE79

## DOI—BLM

### 149. Fluid Mineral Leases and Leasing Process [1004–AE80]

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

*Legal Authority:* 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 to 359 *et seq.*; 43 U.S.C. 1701 *et seq.*; 30 U.S.C. 521 to 531 *et seq.*; 90 Stat. 1083 to 1092; 30 U.S.C. 1701 *et seq.*; 92 Stat. 2073 to 2075; Pub. L. 102–486; Pub. L. 109–58; 25 U.S.C. 396; 25 U.S.C. 396a–g; 25 U.S.C. 2101 to 2108; 30 U.S.C. 1201 *et seq.*; 42 U.S.C. 7101 *et seq.*; 42 U.S.C. 4321 *et seq.*; E.O. 14008; . . .

*CFR Citation:* None.

*Legal Deadline:* None.

*Abstract:* The proposed rule would revise the BLM's oil and gas regulations to update fees, rents, royalties, and bonding requirements related to oil and gas leasing, development, and production. The proposed rule would also update the BLM's process for leasing to ensure the protection and proper stewardship of the public lands, including addressing impacts associated with fossil fuel activities and ensuring a fair return to taxpayers.

*Statement of Need:* This rule will revise the BLM's oil and gas regulations to update the fees, rents, royalties, and bonding requirements related to oil and gas leasing, development, and production pursuant to the Inflation Reduction Act (Pub. L. 117–169). The rule will also update the BLM's process for leasing to ensure the protection and proper stewardship of the public lands, including addressing impacts associated with fossil fuel activities and ensuring a fair return to taxpayers.

*Summary of Legal Basis:* 30 U.S.C. 181 *et seq.*, 30 U.S.C. 351 to 359 *et seq.*, 43 U.S.C. 1701 *et seq.*, 30 U.S.C. 521 to 531 *et seq.*, 90 Stat. 1083 to 1092, 30 U.S.C. 1701 *et seq.*, 92 Stat. 2073 to 2075, Public Law 102–486, Public Law

109–58, 25 U.S.C. 396, 25 U.S.C. 396a–g, 25 U.S.C. 2101 to 2108, 30 U.S.C. 1201 *et seq.*, 42 U.S.C. 7101 *et seq.*, 42 U.S.C. 4321 *et seq.*, and E.O. 14008.  
*Timetable:*

Action	Date	FR Cite
NPRM .....	07/24/23	88 FR 47562
NPRM Comment Period End.	09/22/23	
Final Action .....	04/00/24	

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Agency Contact:* Nick Douglas, Assistant Director, Energy, Minerals, and Realty Management Department of the Interior, Bureau of Land Management, 760 Horizon Drive, Grand Junction, CO 81506, Phone: 970 256–4918, Email: [ndouglas@blm.gov](mailto:ndouglas@blm.gov).

Ben Gruber, Deputy Assistant Director, Energy, Minerals, and Realty Mgmt., Department of the Interior Bureau of Land Management, 1849 C Street NW, Washington, DC 20240, Phone: 951 269–9548, Email: [begruber@blm.gov](mailto:begruber@blm.gov).

RIN: 1004–AE80

## DOI—BLM

### 150. Conservation and Landscape Health (Section 610 Review) [1004–AE92]

*Priority:* Other Significant.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 43 U.S.C. 1732(a)

*CFR Citation:* 43 CFR 6000; 43 CFR 1610.

*Legal Deadline:* None.

*Abstract:* The proposed rule would clarify and support the principles of multiple use and sustained yield in the management of the public lands, incorporating climate resiliency and restoration through conservation and preservation in the management of the public lands pursuant to the Federal Land Policy and Management Act and other relevant authorities. The proposed rule is within 43 CFR 6000 and would provide an overarching framework that would cover multiple resource areas to ensure land health and sustained yield.

*Statement of Need:* The principles of multiple use and sustained yield management govern the BLM's stewardship of America's public lands. This proposed rule interprets and implements a vital component of the BLM's multiple use and sustained yield mission: addressing landscape resilience and using restoration and conservation as tools to ensure

sustainable and productive natural resources for future generations. Identifying tools, standards, and procedures to appropriately achieve sustained yield is particularly important to ensure that the BLM can pursue its multiple use mission and maintain sustained yield in the face of the challenges posed by climate change, drought, fire, land use changes, and other factors impacting the health of land, waters, and ecosystems. This proposed rule addresses those concerns, defines conservation, and provides an operational definition of sustained yield in the context of changing landscapes. This rule also provides a framework for decision-making to appropriately implement conservation, including by identifying best practices to conserve and restore lands and waters to desired conditions based on land health standards and best available science. These proposed regulations will promote restoration opportunities with significant public involvement, honor the Bureau's commitment to work closely with Tribes and other governmental entities, and respond more effectively to changing resource conditions and increasing demands on public lands and waters. Further, this rule will expand Areas of Critical Environmental Concern regulations to affirm statutory requirements.

*Summary of Legal Basis:* Federal Land Policy and Management Act (FLPMA) provides BLM authority for the protection of ecological values (section 102(8)), the preservation of certain lands in their natural condition (section 102(8)), and the establishment of fish and wildlife development and utilization as one of six principal or major uses of public lands (section 103(l)). These mandates in FLPMA provide BLM with general authority to conserve ecosystems across its 245 million acres of public lands. FLPMA section 302(a), provides: The Secretary shall manage the public lands under principles of multiple use and sustained yield . . . except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law 43 U.S.C. 1732(a) (emphasis added). The multiple use and sustained yield principles in section 102(a)(8) authorizes the BLM to implement the policies set forth in this rulemaking effort.

*Alternatives:* N/A.

*Anticipated Cost and Benefits:* TBD.

*Risks:* TBD.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/03/23	88 FR 19583
NPRM Comment Period End.	06/20/23	
Final Action .....	01/00/24	

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* None.

*Federalism:* Undetermined.

*Agency Contact:* Brian St. George, Acting Assistant Director, Directorate of Resources and Planning, Department of the Interior, Bureau of Land Management, 1849 C Street NW, Washington, DC 20240, Phone: 202 239-3741, Email: [bstgeorge@blm.gov](mailto:bstgeorge@blm.gov).

RIN: 1004-AE92

BILLING CODE 4334-63-P

## DEPARTMENT OF JUSTICE (DOJ)— FALL 2023

### Statement of Regulatory Priorities

The mission of the Department of Justice is to uphold the rule of law, to keep our country safe, and to protect civil rights. In carrying out this mission, the Department is guided by the core values of integrity, fairness, and commitment to promoting the impartial administration of justice—including for those in historically underserved, vulnerable, or marginalized communities. Consistent with its mission and values, the Department is prioritizing activities that protect the public against foreign and domestic threats, strengthen enforcement of civil rights laws, defend against domestic and international terrorism, combat gun violence, prevent and control crime, and reform criminal justice systems. Because the Department of Justice is primarily a law enforcement agency, not a regulatory agency, it carries out its principal investigative, prosecutorial, and other enforcement activities through means other than the regulatory process.

Regulatory action is, however, a significant aspect of the law enforcement mission of the Department. The regulatory priorities of the Department include initiatives in the areas of criminal justice reform, immigration, civil rights, and gun violence reduction, and are effectuated through rulemaking by the various components of the Department. These initiatives, as well as others important to components' accomplishing key law enforcement priorities, are summarized below.

In addition to the public participation and outreach efforts of the Department described below in the Civil Rights Division section, the Abstracts of various Justice rulemakings also include descriptions of the Department's efforts in these areas including: 1105-AB69 "OVW Special Tribal Criminal Jurisdiction Reimbursement"; 1105-AB40 "Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have not had a Prior In-Person Medical Evaluation"; 1117-AB60 "Providing Controlled Substances to Ocean Vessels"; 1117-AB63 "Termination of Registration Upon Discontinuation of Business or Change of Ownership"; 1117-AB69 "Operation of Automated Dispensing Systems at Long Term Care Facilities by Hospital/Clinic Pharmacies"; 1117-AB72 "Changes to a Prescription"; 1120-AB05 "District of Columbia Educational Good Time Credit"; 1120-AB67 "Use of Chemical Agents or Other Less-Than-Lethal Force in Immediate Use of Force Situations"; 1120-AB71 "Inmate Discipline Program: Disciplinary Segregation and Prohibited Act Code Changes"; and 1121-AA89 "Updating Office for Victims of Crime Programs Regulations."

### *Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)*

ATF issues regulations to enforce and implement federal laws relating to the manufacture, importation, sale, and other commerce in firearms and explosives. Such regulations are designed to promote the ATF mission to curb illegal traffic in, and criminal use of, firearms and explosives, and to assist state, local, Tribal, territorial, and other federal law enforcement agencies in reducing violent crime.

ATF will continue, as a priority during fiscal year 2024, to seek modifications to its regulations governing commerce in firearms and explosives in furtherance of these important goals.

The Department is undertaking a rulemaking to amend ATF's regulations to conform with the changes made by Congress in the Bipartisan Safer Communities Act (Pub. L. 117-159) and parts of the Consolidated Appropriations Act of 2022 (Pub. L. 117-109), which included the NICS Denial Notification Act of 2022 (RIN 1140-AA57). The Department has also proposed to amend ATF's regulations to further clarify what it means for a person to be "engaged in the business" of dealing in firearms, and to have the intent to "predominantly earn a profit" from the sale or disposition of firearms

(RIN 1140-AA58). ATF is undertaking an amendment to 27 CFR part 555 to require that persons who store explosive materials annually notify the local authority that has jurisdiction for fire safety in the locality in which the explosive materials are being stored of the type, quantity, and location of each site where the explosive materials are being stored (RIN 1140-AA51).

### *Bureau of Prisons (BOP)*

BOP issues regulations to enforce the Federal laws relating to its mission: to protect public safety by ensuring that federal offenders serve their sentences of imprisonment in facilities that are safe, humane, cost-efficient, and appropriately secure, and to provide reentry programming to ensure their successful return to the community.

The First Step Act (FSA) of 2018, Public Law 115-391, 132 Stat. 5194 (2018) has brought a host of regulatory changes for BOP. To date, BOP has successfully enacted FSA-related regulations (1) to enable eligible inmates to earn Time Credits towards prerelease custody or early transfer to supervised release, and (2) to modify the amount of Good Time Credit to which eligible inmates are entitled. BOP's next FSA-related regulatory measure involves publishing a Notice of Proposed Rulemaking (NPRM) titled the *Reservation of Funds for Reentry Under the First Step Act*. This rule proposes to implement a specific FSA provision requiring BOP to reserve a portion of the compensation inmates would otherwise receive for working to assist these inmates with costs associated with release from prison. BOP anticipates the NPRM's publication in the **Federal Register** by the end of 2023.

Another important BOP regulatory measure involving management of inmate funds is the Inmate Financial Responsibility Program (IFRP). On January 10, 2023, BOP published an NPRM titled *Inmate Financial Responsibility Program: Procedures*, which proposes to withhold a portion of inmate work pay and money received by outside sources in order to pay restitution obligations toward victims and satisfy other lawful obligations. Specifically, the rule proposes withholding 75% of all community-source deposits in inmates' commissary account; withholding 50% of pay for inmates in grades 1 through 4 of UNICOR; withholding 25% of pay for inmates in grade 5 of UNICOR and inmates receiving performance pay for institution work; removing two penalties for failure to participate in the program; and adding one penalty for an inmate's refusal to participate. BOP

continues to carefully review and thoughtfully consider the 1,300 public comments received in response to the NPRM.

In addition, BOP continues to actively pursue several proposed rules to update the inmate discipline program; revise technical sections of the regulation regarding filing of tort claims; clarify use of force policy for less-than-lethal munitions; and modify clinical guidelines related to infectious disease testing for affected inmates. Finally, BOP continues to explore procedural avenues to finalize interim final rules related to, for example, (1) exceptions to the filing requirements for certain administrative remedies, and (2) calculation of educational good time credit for eligible District of Columbia inmates.

#### *Civil Rights Division (CRT)*

CRT works to uphold the civil and constitutional rights of all persons in the United States, particularly some of the most vulnerable members of our society. Consistent with this mission, CRT plans to engage in five separate rulemakings on disability rights.

First, CRT plans to adopt technical standards for public entities' websites under title II of the Americans with Disabilities Act (ADA) to help public entities meet their existing ADA obligations to ensure their websites are accessible to people with disabilities (RIN 1190-AA79). The Department issued a Notice of Proposed Rulemaking on this topic in August 2023. To promote public engagement with the rulemaking, the Department also made available a fact sheet providing a plain language summary of the proposed rule. The fact sheet is intended to help the public get acquainted with the proposal so that the proposed rule feels more navigable and so that providing public comments feels more approachable. These resources were posted on the Department's [www.ada.gov](http://www.ada.gov) website with information about how to submit comments. They were also posted on a web page created by HHS's Administration for Community Living to track rulemakings implementing non-discrimination requirements protecting people with disabilities. CRT also held a number of listening sessions to provide an overview of the proposal and hear the perspectives of a variety of stakeholders including disability groups, State and local government groups, and others. Second, CRT plans to amend the current DOJ regulation under section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on disability in programs and activities conducted by an

executive agency, to bring it up to date (RIN 1190-AA73). Third, CRT will propose standards that address the accessibility of medical diagnostic equipment under title II of the ADA (RIN 1190-AA78). Fourth, CRT intends to propose requirements for pedestrian facilities in the public right-of-way, such as sidewalks and crosswalks, covered by part A of title II of the ADA that are consistent with the Access Board's minimum Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way to help public entities meet their existing ADA obligations to make those facilities accessible (RIN 1190-AA77). Last, CRT plans to publish an advance notice of proposed rulemaking seeking public input on possible revisions to its ADA regulations to ensure the accessibility of equipment and furniture in public entities and public accommodations' programs and services (RIN 1190-AA76).

#### *Drug Enforcement Administration (DEA)*

DEA is the agency primarily responsible for coordinating the drug law enforcement activities of the United States and also assisting in the implementation of the President's National Drug Control Strategy. DEA implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and the Controlled Substances Import and Export Act (21 U.S.C. 801-971), as amended, collectively referred to as the Controlled Substances Act (CSA).

DEA's mission is to enforce the controlled substances laws and regulations of the United States and bring to the criminal and civil justice system those organizations and individuals involved in the growing, manufacture, or distribution of controlled substances and listed chemicals appearing in or destined for illicit traffic in the United States. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States.

Pursuant to its statutory authority, DEA intends to continue with the following priority regulation that appeared on the Fall 2022 Unified Agenda:

DEA published a Notice of Purposed Rulemaking (NPRM) on *Telemedicine Prescribing of Controlled Substances when the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation*, in March of 2023, and

received a large volume of public comments. DEA then published a Temporary Rule on May 10 to extend the pandemic-era flexibilities through November 11, 2023. On October 10, 2023, DEA published a second Temporary Rule to further extend the pandemic-era flexibilities through December 31, 2024. DEA is considering a new NPRM to promulgate effective regulations responsive to the general public and industry concerns. DEA may propose a regulation that would authorize the issuance of registrations for telemedicine, and to prescribe the circumstances in which they may be obtained and used (RIN 1117-AB40).

DEA also intends to publish a proposed regulation to amend the reporting requirements found at 21 CFR 1310.05(b)(2) mandating notification to DEA of domestic transactions involving tableting and encapsulating machines 15-days before the seller ships the machine. The draft regulation also proposes to amend the definitions of a "tableting machine" and an "encapsulating machine" to include "parts thereof." Finally, the draft regulation seeks to modernize customer verification requirements for transactions and proposes modifications to DEA Form 452 to improve tracking of transactions of tableting and encapsulating machines (RIN 1117-AB80).

In support of its regulatory function, DEA regularly engages with the registrant community, stakeholders, and the public at large. DEA launched "Operation Engage" for its field offices to connect and collaborate with the communities they serve through local partnerships to implement strategies and activities regarding drug use prevention and education as well as bridging public safety and public health efforts to help lower drug overdose deaths. DEA also routinely interacts and engages with registrants by developing programs and presenting topics of interest in webinar sessions, industry meetings, and conferences. These outreach events facilitate open dialogues with stakeholders and allow DEA an opportunity to better understand new and upcoming issues faced by the registrant community.

DEA also plans on improving and broadening community engagement and advancing participation of underserved communities by partnering with trusted members and leaders in the community, not-for-profit organizations, and patient advocacy groups, and by developing in-person and virtual listening sessions.

Based on the feedback, comments, and industry concerns received from registrants, stakeholders, and the public

during presentations and routine engagement, DEA makes informed decisions to evaluate the need to update existing regulations or identify new ones that should be proposed. DEA will continue to broaden its public engagement to support the development of future regulatory actions.

*Executive Office for Immigration Review (EOIR)*

EOIR's primary mission is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the nation's immigration laws. Under delegated authority from the Attorney General, EOIR conducts immigration court proceedings and appellate reviews. Immigration judges in EOIR's Office of the Chief Immigration Judge adjudicate cases to determine whether noncitizens should be removed from the United States or whether they are eligible for relief from removal. The Board of Immigration Appeals (BIA) has nationwide jurisdiction over appeals from decisions of immigration judges, as well as other matters specified by regulation. In addition, EOIR also conducts administrative hearings involving immigration-related employment practices, discrimination claims, and document fraud cases. Accordingly, the Department of Justice has a significant role in the administration of the nation's immigration laws. The Attorney General also is responsible for civil litigation and criminal prosecutions relating to the immigration laws.

EOIR is working to revise and update the regulations to increase administrative efficiency, while also safeguarding fairness interests. Specifically, EOIR has issued a proposed rule that would restore longstanding procedures in place before a prior rule (RIN 1125-AA96), including administrative closure, and clarify and codify other established practices. The rule will promote the efficient and expeditious adjudication of cases, afford immigration judges and the Board flexibility to efficiently allocate their limited resources, and protect due process for parties before immigration judges and the Board.

EOIR and the Department of Homeland Security (DHS) are also drafting a joint proposed rule that would provide clarity and uniformity to DHS custody procedures and EOIR bond hearing procedures (RIN 1125-AB27). The Departments believe this rulemaking will help address litigation issues and resolve varying judicial interpretations of the existing custody

and bond hearing procedures among Federal circuit courts.

Additionally, EOIR is developing several regulations related to the asylum system. For example, EOIR and DHS intend to propose joint rules to withdraw prior rules that created obstacles to asylum, such as RIN 1125-AB08, which proposes to rescind a pandemic-era rule that categorically barred asylum for individuals fleeing political, religious, or other persecution solely based on their passage through a country in which a communicable disease is prevalent, regardless of whether an individual was exposed to the disease or was vaccinated, and RIN 1125-AB22, which proposes to rescind or modify regulatory revisions made by a prior rule to procedures for asylum and withholding of removal.

*Federal Bureau of Investigation (FBI)*

The FBI is responsible for protecting and defending the United States against terrorist and foreign intelligence threats, upholding and enforcing the criminal laws of the United States, and providing leadership and criminal justice services to federal, state, local, tribal territorial, and international agencies and partners. Only in limited contexts does the FBI rely on rulemaking.

For example, the FBI drafted a proposed rule to establish the criteria for use by a designated entity in deciding fitness as described under the Child Protection Improvements Act (CPIA), 34 U.S.C. 40102, Public Law 115-141, div. S, title I, section 101(a)(1), Mar. 23, 2018, 132 Stat. 1123.

The CPIA requires that the Attorney General, by rule, establish the criteria for use by designated entities in making a determination of fitness described in subsection (b)(4) of the Act concerning whether the provider has been convicted of, or is under pending indictment for, a crime that bears upon the provider's fitness to have responsibility for the safety and wellbeing of children, the elderly, or individuals with disabilities and shall convey that determination to the qualified entity. Such criteria shall be based on the criteria established pursuant to section 108(a)(3)(G)(i) of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (34 U.S.C. 40102 note) and section 658H of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858f).

The FBI is also drafting rules to implement the Bipartisan Safer Communities Act of 2022 (BSCA), 28 U.S.C. 534, 34 U.S.C. 40901, and 34 U.S.C., Subt. IV, ch. 411, Refs. & Annos., Public Law 117-159, div A, title II,

sections 12001(a) and 12004(h), June 25, 2022, 136 Stat. 1313 and the National Instant Criminal Background Check System (NICS) Denial Notification Act (NDNA) of 2022, 18 U.S.C. 921, 18 U.S.C. 925B through 925D, Public Law 117-103, div. W, title XI, sections 1101 through 1103, March 15, 2022, 136 Stat. 919.

In accordance with the BSCA, the FBI will propose regulatory amendments to include, but not be limited to: authorizing and establishing the process for federal firearm licensees (FFLs) to receive access to records of stolen firearms maintained in the FBI's National Crime Information Center to verify if a firearm offered for sale to the FFL has been reported stolen; authorizing, and establishing the process for, FFLs to use NICS for the purpose of voluntary background checks of certain current and/or prospective employees of the FFL; and establishing the process when NICS has been contacted for the prospective transfer of a firearm to a person under the age of 21. For NICS transactions involving persons under the age of 21, proposed regulation amendments will address, but may not be limited to, the BSCA provisions regarding: (A) the application of a delay, up to the tenth business day, if cause exists to further investigate a possibly disqualifying juvenile record; (B) the required collection (and any purge/retention) of residential address information submitted by an FFL so the FBI may comply with the expanded background checks of such persons; and (C) the process for conducting the expanded background checks to determine if certain entities where such persons reside (the state criminal history repository or juvenile justice information system, the state custodian of mental health adjudication records; and local law enforcement) have records establishing "cause" that such persons have possibly disqualifying juvenile records under 18 U.S.C., section 922(d).

The NDNA mandates that, when the FBI denies a firearm transfer during a NICS transaction, the Attorney General is to report various information about that denial to local law enforcement authorities in the state or tribe where a firearm was sought for transfer and, if different, the local law enforcement authorities of the state or tribe where the person resides. "Local law enforcement authority" is defined by the NDNA at 18 U.S.C., section 921(a).

Regulatory amendments will be drafted outlining the process for submitting, and the contents of, such denial notifications, including language similar to the BSCA, addressing the required collection (and purge/



retention) of a prospective transferee's residential address so the FBI may contact the proper local law enforcement authorities should the transaction be denied. Regulatory proposals based on the NDNA will also address denial notifications being sent to prosecution authorities in the jurisdiction where the firearm was sought and circumstances where authorities need to be updated that a person who was the subject of a denial notification has subsequently been determined to not be prohibited. Regulation proposals from the NDNA will also address the Attorney General's new, annual report to Congress concerning denial notifications, and related statistics, from the previous year.

## DOJ—CIVIL RIGHTS DIVISION (CRT)

### Proposed Rule Stage

#### 151. Implementation of the ADA Amendments Act of 2008: Federally Conducted (Section 504 of the Rehabilitation Act of 1973) [1190-AA73]

*Priority:* Other Significant.

*Legal Authority:* Pub. L. 110–325; 29 U.S.C. 794 (sec. 504 of the Rehab. Act of 1973); E.O. 12250 (45 FR 72855)

*CFR Citation:* 28 CFR 39.

*Legal Deadline:* None.

*Abstract:* Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), prohibits discrimination on the basis of disability in programs and activities conducted by an Executive agency. The Department plans to revise its 504 Federally conducted regulation at 28 CFR part 39 to incorporate amendments to the statute, including the changes in the meaning and interpretation of the applicable definition of disability required by the ADA Amendments Act of 2008, Public Law 110–325, 122 Stat. 3553 (Sep. 25, 2008); incorporate requirements and limitations stemming from judicial decisions; and make other non-substantive clarifying edits, including updating outdated terminology and references.

*Statement of Need:* This rule is necessary to bring the Department's prior section 504 Federally conducted regulation, which has not been updated in three decades, into compliance with judicial decisions establishing rights and limitations under section 504, as well as statutory amendments to the Rehabilitation Act, including the new definition of disability provided by the ADA Amendments Act of 2008, which became effective on January 1, 2009. Additionally, following the passage of

the Americans with Disabilities Act (ADA), amendments to the Rehabilitation Act sought to ensure that the same precepts and values embedded in the ADA were also reflected in the Rehabilitation Act. To ensure the intended parity between the two laws, it is also necessary to update the Federally conducted regulation to align it with the relevant provisions of title II of the ADA. An updated Federally conducted regulation would consolidate the existing section 504 requirements in one place for easy reference.

*Summary of Legal Basis:* The summary of the legal basis of authority for this regulation is set forth above in the abstract.

*Alternatives:* There are no appropriate alternatives to issuing this NPRM since it implements requirements and limitations arising from the statute and judicial decisions.

*Anticipated Cost and Benefits:* Because the NPRM would incorporate existing legal requirements and limitations in the Department's section 504 Federally conducted regulation, the Department does not anticipate any costs from this rule.

*Risks:* Failure to update the Department's section 504 Federally conducted regulation to conform to legal requirements and limitations provided under the statute and judicial decisions will interfere with the Department's ability to meet its non-discrimination requirements under section 504.

#### Timetable:

Action	Date	FR Cite
NPRM .....	10/00/24	
NPRM Comment Period End.	01/00/25	

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* Federal.

*Additional Information:* Transferred from RIN 1190-AA60.

*Agency Contact:* Rebecca Bond, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, 4 Constitution Square, 150 M Street NE, Washington, DC 20002, *Phone:* 202 307-0663.

*RIN:* 1190-AA73

## DOJ—CRT

#### 152. Nondiscrimination on the Basis of Disability by State and Local Governments; Public Right-of-Way [1190-AA77]

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

*Legal Authority:* 42 U.S.C. 12134(a); 42 U.S.C. 12134(c)

*CFR Citation:* 28 CFR 35.

*Legal Deadline:* None.

*Abstract:* The Department of Justice anticipates issuing a Notice of Proposed Rulemaking that would establish accessibility requirements to help public entities meet their existing Americans with Disabilities Act (ADA) obligations to ensure that sidewalks and other pedestrian facilities in the public right-of-way are accessible to and usable by individuals with disabilities. The Architectural and Transportation Barriers Compliance Board (Access Board) has issued accessibility guidelines for pedestrian facilities in the public right-of-way, and the Department of Justice is required under the ADA to promulgate regulations that include standards that are consistent with the Access Board's minimum guidelines.

*Statement of Need:* This rule is necessary to help public entities meet their existing ADA obligations to ensure that pedestrian facilities in the public right-of-way are accessible to and usable by individuals with disabilities. The Access Board intends to issue minimum accessibility guidelines for pedestrian facilities in the public right-of-way, and the ADA requires the Department of Justice to include standards in its regulations implementing part A of title II of the ADA that are consistent with the minimum ADA guidelines issued by the Access Board. Accordingly, the Department of Justice intends to propose requirements for pedestrian facilities covered by part A of title II of the ADA that are consistent with the Access Board's minimum Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way. These requirements would help ensure that people with disabilities have access to sidewalks, curb ramps, pedestrian street crossings, and other pedestrian facilities in the public right-of-way.

*Summary of Legal Basis:* The summary of the legal basis for this regulation is set forth in the above abstract.

*Alternatives:* There are no appropriate alternatives to issuing this NPRM because the ADA requires the Department of Justice to include standards in its regulations implementing part A of title II of the

ADA that are consistent with the minimum ADA guidelines issued by the Access Board. The Access Board's accessibility guidelines will only become binding when the Department of Justice adopts them as legally enforceable requirements through rulemaking.

*Anticipated Cost and Benefits:* The Department anticipates costs to State and local governments given that this rule would require that pedestrian facilities in the public right-of-way comply with the Department's accessibility requirements under part A of title II of the ADA. The Department also anticipates significant benefits to people with disabilities, who would obtain greater access to sidewalks and other pedestrian facilities in the public right-of-way.

*Risks:* Failure to adopt requirements for pedestrian facilities covered by part A of title II of the ADA that are consistent with the Access Board's minimum Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way would mean that such Access Board guidelines would remain nonbinding and unenforceable. It would also mean that the Department would not be complying with its obligation to ensure that the standards in its regulations are consistent with the minimum ADA guidelines issued by the Access Board.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/00/24	

*Regulatory Flexibility Analysis Required:* Undetermined.  
*Small Entities Affected:* Governmental Jurisdictions.

*Government Levels Affected:* Local, State.

*Federalism:* Undetermined.

*Agency Contact:* Rebecca Bond, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, 4 Constitution Square, 150 M Street NE, Washington, DC 20002, *Phone:* 202 307-0663.

*RIN:* 1190-AA77

**DOJ—CRT**

**153. Nondiscrimination on the Basis of Disability by State and Local Governments: Medical Diagnostic Equipment [1190-AA78]**

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

*Legal Authority:* 42 U.S.C. 12101 *et seq.*

*CFR Citation:* 28 CFR 35.

*Legal Deadline:* None.

*Abstract:* Title II of the Americans with Disabilities Act (ADA) requires State and local governments to provide services, programs, and activities in a manner that is accessible to people with disabilities. The Department will seek public comment on proposed changes to its regulations to adopt the U.S. Architectural and Transportation Barriers Compliance Board's (Access Board) Standards for Medical Diagnostic Equipment (MDE) to ensure that MDE is accessible to persons with disabilities in their participation in or benefit of services, programs, and activities provided by public entities. The Department previously announced that it intended to issue an NPRM, titled Nondiscrimination on the Basis of Disability by State and Local Governments and Places of Public Accommodation; Equipment and Furniture (RIN 1190-AA76) addressing possible revisions to its ADA regulations to ensure the accessibility of equipment and furniture generally. However, given the specialized nature of MDE, the Department has decided to publish a separate NPRM that addresses the accessibility of MDE.

*Statement of Need:* MDE that is accessible to individuals with disabilities is often critical to a public entity's ability to provide an individual with a disability with equal access to its health care services, programs, and activities. The Department's ADA regulations contain the ADA Standards for Accessible Design (the ADA Standards), which include accessibility standards for some types of fixed or built-in equipment and furniture. However, there are no specific provisions in the ADA Standards or the ADA regulations explicitly addressing the accessibility of MDE. While manufacturers have begun to offer MDE that is more accessible to and usable by people with disabilities and the Department has sought to ensure people with disabilities have equal access to medical care under the ADA's general regulatory provisions through enforcement and the issuance of technical assistance, the Department recognizes that more specific standards are necessary to guarantee full and equal access to health care services, programs, and activities. This rule is necessary to ensure that inaccessible MDE does not prevent people with disabilities from accessing title II entities' services, programs, and activities.

*Summary of Legal Basis:* The summary of the legal basis for this regulation is set forth in the above abstract.

*Alternatives:* There are no appropriate alternatives to issuing this NPRM. The Access Board has issued standards on MDE, but these standards only become legally enforceable under the ADA when the Department adopts them through a rulemaking. Alternatively, the Department could create its own technical standards for MDE for which the Access Board does not adopt guidelines and implement them through a rulemaking.

*Anticipated Cost and Benefits:* The Department anticipates costs to covered entities (*i.e.*, State and local governments). Entities may need to acquire new MDE to meet technical standards that the Department includes in its regulations. The Department also anticipates significant benefits to people with disabilities, who may obtain greater access to public entities' services, programs, and activities, which may improve their health or potentially save their lives.

*Risks:* Failure to adopt technical standards to ensure that people with disabilities have access to MDE in public entities' programs, services, and activities will prevent people with disabilities from having the full and equal access to which they are entitled. The health of people with disabilities may suffer as a result of unequal access to medical care.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/00/23	
NPRM Comment Period End.	12/00/23	

*Regulatory Flexibility Analysis Required:* Undetermined.

*Small Entities Affected:* Governmental Jurisdictions.

*Government Levels Affected:* Local, State.

*Federalism:* Undetermined.

*Agency Contact:* Rebecca Bond, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, 4 Constitution Square, 150 M Street NE, Washington, DC 20002, *Phone:* 202 307-0663.

*Related RIN:* Split from 1190-AA76

*RIN:* 1190-AA78

**DOJ—CRT**

## Final Rule Stage

**154. Nondiscrimination on the Basis of Disability: Accessibility of Web Information and Services of State and Local Government Entities [1190-AA79]**

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 42 U.S.C. 12101 *et seq.*

*CFR Citation:* 28 CFR 35.

*Legal Deadline:* None.

*Abstract:* The Americans with Disabilities Act (ADA) states that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. 12132. However, many public entities’ (*i.e.*, State and local governments’) websites and mobile apps fail to incorporate or activate features that enable users with disabilities to access the public entity’s services, programs, and activities. The Department published a Notice of Proposed Rulemaking (NPRM) proposing to amend its title II ADA regulation to provide technical standards to assist public entities in complying with their existing obligations to make their websites and mobile apps accessible to individuals with disabilities. The Department is working to issue a final regulation on this topic.

*Statement of Need:* Just as steps exclude people who use wheelchairs from a building, inaccessible websites or mobile apps can exclude people with a range of disabilities from accessing critical State and local government services, programs, and activities. The Department is proposing technical requirements to provide concrete standards to public entities on how to fulfill their obligations under title II to provide access to all of their services, programs, and activities that are offered via the web or mobile apps. The Department believes the requirements described in this rule are necessary to ensure the equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities as set forth in the ADA. 42 U.S.C. 12101(a)(7). This is particularly necessary now that public entities increasingly rely on the web and mobile apps to provide their services, programs, and activities.

*Summary of Legal Basis:* The summary of the legal basis for this

regulation is set forth in the above abstract.

*Alternatives:* There are no appropriate alternatives to issuing this rule. In the NPRM, the Department discussed various regulatory proposals that would ensure full access to websites and mobile apps of State and local governments and solicited public comments on these proposals. The Department will continue to evaluate these proposals as it works to issue a final regulation.

*Anticipated Cost and Benefits:* The Department anticipates that this rule will be economically significant (that is, that the rule will have an annual effect on the economy of \$200 million or more, or adversely affect in a material way the economy, a sector of the economy, the environment, public health or safety, or State, local or tribal governments or communities). However, the Department believes that revising its title II rule to clarify the obligations of State and local governments to provide accessible websites and mobile apps will significantly increase equal access by providing citizens with disabilities the opportunity to participate in, and benefit from, State and local government services, programs, and activities. It will also ensure that individuals with disabilities have access to important services and information that are provided over the web or through mobile apps, such as benefits applications and emergency information. In drafting its NPRM, the Department attempted to minimize the compliance costs to State and local governments while maximizing the benefits of compliance to persons with disabilities and the Department will consider public comments it received on this issue when promulgating its final rule.

*Risks:* If the Department does not revise its ADA title II regulations to address website and mobile app accessibility, persons with disabilities in many communities will continue to be unable to access their State and local governments’ services, programs, and activities in the same manner as citizens without disabilities, and in some cases persons with disabilities will not be able to access those services at all. Furthermore, State and local governments will not have specific information about how to meet their ADA obligations with respect to website and mobile app accessibility.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/04/23	88 FR 51948

Action	Date	FR Cite
NPRM Comment Period End.	10/03/23	
Final Action .....	04/00/24	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Small Entities Affected:* Governmental Jurisdictions.

*Government Levels Affected:* Local, State.

*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—DRUG ENFORCEMENT ADMINISTRATION (DEA)**

## Proposed Rule Stage

**155. Telemedicine Prescribing of Controlled Substances When the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation [1117-AB40]**

*Priority:* Other Significant.

*Legal Authority:* 21 U.S.C. 831(h); 21 U.S.C. 802(54); Pub. L. 115-271, sec. 3232

*CFR Citation:* 21 CFR 1301.

*Legal Deadline:* Final, Statutory, October 24, 2019.

*Abstract:* The Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (the Act) (Pub. L. 110-425) was enacted on October 15, 2008, and amended the Controlled Substances Act by adding various provisions to prevent the illegal distribution and dispensing of controlled substances by means of the internet. Among other things, the Act required an in-person medical evaluation as a prerequisite to prescribing or otherwise dispensing controlled substances by means of the internet, except in the case of practitioners engaged in the practice of telemedicine. The definition of the “practice of telemedicine” includes seven distinct categories that involve circumstances in which the prescribing practitioner might be unable to satisfy the Act’s in-person medical evaluation requirement yet nonetheless has sufficient medical information to prescribe a controlled substance for a legitimate medical purpose in the usual course of professional practice. One specific category within the Act’s definition of the “practice of telemedicine” includes “a practitioner who has obtained from the [DEA Administrator] a special registration

under [21 U.S.C. 831(h)].” 21 U.S.C. 802(54)(E). The Act also specifies certain criteria that the DEA must consider when evaluating an application for such a registration. However, the Act contemplates that the DEA must issue regulations to effectuate this special registration provision.

After publishing an NPRM on March 1, 2023, and in response to the large volume of comments received, DEA has since published a Notice of Meeting to invite all interested persons, including medical practitioners, patients, pharmacy professionals, industry members, law enforcement, stakeholders, community leaders, and other third parties, to participate in listening sessions held on September 12 and 13, 2023. The additional feedback received will assist DEA in potential rulemaking.

**Statement of Need:** In light of the information and feedback received in public comments to the NPRM published on March 1, 2023, DEA is considering a new NPRM on Telemedicine Prescribing of Controlled Substances when the Practitioner and the Patient Have Not Had a Prior In-Person Medical Evaluation in order to promulgate effective regulations responsive to the general public and industry concerns.

**Summary of Legal Basis:** DEA implements and enforces the CSA and the Controlled Substances Import and Export Act, (21 U.S.C. 801–971), as amended. DEA publishes the implementing regulations for these statutes in 21 CFR parts 1300 to end. These regulations are designed to ensure a sufficient supply of controlled substances for medical, scientific, and other legitimate purposes, and to deter the diversion of controlled substances for illicit purposes.

As mandated by the CSA, DEA establishes and maintains a closed system of control for manufacturing, distribution, and dispensing of controlled substances, and requires any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances to register with DEA, unless they meet an exemption, pursuant to 21 U.S.C. 822. The CSA further authorizes the Administrator to promulgate regulations necessary and appropriate to execute the functions of subchapter I (Control and Enforcement) and subchapter II (Import and Export) of the CSA. 21 U.S.C. 871(b), 958(f).

**Alternatives:** DEA is considering various alternatives, particularly the proposed requirements outlined in the March 1, 2023 NPRM.

**Anticipated Cost and Benefits:** DEA anticipates this rule will not be economically significant (that is, that the rule will not have an annual effect on the economy of \$200 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities). DEA believes the rule will reduce the cost of providing and receiving medical care, increasing access, particularly for those patients where an in-person medical evaluation is difficult, such as patients in rural areas and with disabilities.

**Risks:** Failing to issue a rule on telemedicine would interfere with DEA’s mission to prevent, detect, and investigate the diversion of controlled pharmaceuticals and listed chemicals from legitimate sources while ensuring an adequate and uninterrupted supply for legitimate medical, commercial, and scientific needs.

#### **Timetable:**

Action	Date	FR Cite
NPRM .....	03/01/23	88 FR 12875
NPRM Comment Period End.	03/31/23	
Temporary Rule ..	05/10/23	88 FR 30037
Temporary Rule Effective.	05/11/23	
Second Temporary Rule.	10/10/23	88 FR 69879
Second Temporary Rule Effective.	11/11/23	
NPRM .....	12/00/23	

**Regulatory Flexibility Analysis Required:** No.

**Government Levels Affected:** None.

**Additional Information:** DEA Docket number 407.

**URL For More Information:** [DPW@dea.gov](mailto:DPW@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–AB40

## **DOJ—DEA**

### **156. Import/Export and Domestic Transactions of Tableting and Encapsulating Machines [1117–AB80]**

**Priority:** Other Significant.

**Legal Authority:** 21 U.S.C. 802; 21 U.S.C. 821; 21 U.S.C. 822; 21 U.S.C. 827; 21 U.S.C. 830; 21 U.S.C. 871; 21 U.S.C. 951

**CFR Citation:** 21 CFR 1300.02; 21 CFR 1310.05(b)(2); 21 CFR 1310.07.

**Legal Deadline:** None.

**Abstract:** This regulation would amend the reporting requirements found at 21 CFR 1310.05(b)(2) mandating notification to DEA of domestic transactions involving tableting and encapsulating machines 15-days before the seller ships the machine. The draft regulation also would amend the definitions of a tableting machine and an encapsulating machine to include parts thereof. Finally, the draft regulation seeks to modernize customer verification requirements for transactions and proposes modifications to DEA Form 452 to improve tracking of transactions of tableting and encapsulating machines.

**Statement of Need:** In order to combat the opioid epidemic currently fueled by counterfeit pills, it is necessary for DEA to amend the reporting requirements for all imports, exports and domestic transactions involving tableting and encapsulating machines and their parts. The proposed amendments to Form 452 are intended to capture more details about all transactions to allow DEA to closely monitor these machines and parts as they move throughout the United States. Additionally, this amended rule proposes to modify the verification methods for regulated persons transacting tableting and encapsulating machines, to reflect modern technological methods (e.g., internet search). The proposed rule amendments will minimize the diversion of tableting and encapsulating machines which will reduce the illegal manufacturing of illicit drugs.

**Summary of Legal Basis:** DEA implements and enforces the CSA and the Controlled Substances Import and Export Act, (21 U.S.C. 801–971), as amended. DEA publishes the implementing regulations for these statutes in 21 CFR parts 1300 to end. These regulations are designed to ensure a sufficient supply of controlled substances for medical, scientific, and other legitimate purposes, and to deter the diversion of controlled substances for illicit purposes.

As mandated by the CSA, DEA establishes and maintains a closed system of control for manufacturing, distribution, and dispensing of controlled substances, and requires any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances to register with

DEA, unless they meet an exemption, pursuant to 21 U.S.C. 822. The CSA further authorizes the Administrator to promulgate regulations necessary and appropriate to execute the functions of subchapter I (Control and Enforcement) and subchapter II (Import and Export) of the CSA. 21 U.S.C. 871(b), 958(f).

**Alternatives:** There are no appropriate alternatives to issuing this NPRM. This NPRM is being issued in accordance with statutory requirements.

**Anticipated Cost and Benefits:** DEA anticipates this rule will not be economically significant (that is, that the rule will not have an annual effect on the economy of \$200 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or tribal governments or communities). DEA believes the rule will reduce the time necessary to properly complete and process the required forms for import and export of tabulation and encapsulation machines, reducing delays, while increasing the number of submissions. Any change to cost is expected to be de minimis.

**Risks:** If this rule is not amended, tableting and encapsulating machines that enter U.S. ports have a greater chance of being diverted and used to illegally manufacture illicit drugs.

**Timetable:**

Action	Date	FR Cite
NPRM .....	03/00/24	

**Regulatory Flexibility Analysis Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** None.

**Additional Information:** DEA Docket number 739.

**URL For More Information:** [DPW@dea.gov](mailto:DPW@dea.gov).

**URL For Public Comments:** <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-AB80

## DOJ—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW (EOIR)

Proposed Rule Stage

### 157. Clarifying Definitions and Analyses for Fair and Efficient Asylum and Other Protection Determinations [1125-AB13]

**Priority:** Other Significant.

**Legal Authority:** 8 U.S.C. 1101(a)(42); 8 U.S.C. 1158; 8 U.S.C. 1225; 8 U.S.C. 1231 and 1231 note; Executive Order 14010, 86 FR 8267 (Feb. 2, 2021)

**CFR Citation:** 8 CFR 208; 8 CFR 235; 8 CFR 244; 8 CFR 1208; 8 CFR 1244.

**Legal Deadline:** None.

**Abstract:** This rule proposes to amend Department of Homeland Security (DHS) and Department of Justice (DOJ) (collectively, “the Departments”) regulations that govern eligibility for asylum and withholding of removal. The amendments focus on portions of the regulations that address the definitions of membership in a particular social group and the interpretation of several other elements of eligibility for asylum that are often determinative in particular social group claims, including the requirements of a failure of State protection and determinations about whether persecution is on account of a protected ground. The rule will also propose to republish, modify or rescind portions of the Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review final rule (RINs 1125-AA94 and 1615-AC42).

This rule is consistent with Executive Order 14010 of February 2, 2021, which directs the Departments to promulgate joint regulations, consistent with applicable law, addressing the circumstances in which a person should be considered a member of a particular social group.

**Statement of Need:** This rule provides guidance on a number of key interpretive issues of the refugee definition used by adjudicators deciding asylum and withholding of removal (withholding) claims. The interpretive issues include whether persecution is inflicted on account of a protected ground, the requirements for establishing the failure of State protection, and the parameters for defining membership in a particular social group. This rule will aid in the adjudication of claims made by applicants whose claims fall outside of the rubric of the protected grounds of race, religion, nationality, or political opinion. One example of such claims that often fall within the particular social group ground concerns people who have suffered or fear domestic

violence. This rule is expected to consolidate issues raised in a proposed rule in 2000 and to address issues that have developed since the publication of the proposed rule. This rule should provide greater stability and clarity in this important area of the law. This rule will also provide guidance to the following adjudicators: USCIS asylum officers, DOJ Executive Office for Immigration Review (EOIR) immigration judges, and members of the EOIR Board of Immigration Appeals.

Furthermore, on February 2, 2021, President Biden issued Executive Order 14010 that directs DOJ and DHS [to] promulgate joint regulations, consistent with applicable law, addressing the circumstances in which a person should be considered a member of a “particular social group,” as that term is used in 8 U.S.C. 1101(a)(42)(A), as derived from the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

**Summary of Legal Basis:** The purpose of this rule is to provide guidance on certain issues that have arisen in the context of asylum and withholding adjudications. The 1951 Geneva Convention relating to the Status of Refugees contains the internationally accepted definition of a refugee. United States immigration law incorporates an almost identical definition of a refugee as a person outside his or her country of origin “who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” Section 101(a)(42) of the Immigration and Nationality Act.

**Alternatives:** Because this rulemaking is mandated by executive order, there are no feasible alternatives at this time.

**Anticipated Cost and Benefits:** DOJ and DHS are currently considering the specific cost and benefit impacts of the proposed provisions.

**Risks:** Without this rulemaking, the circumstances by which a person is considered a member of a particular social group will continue to be subject to judicial and agency interpretation, which may differ by circuit.

**Timetable:**

Action	Date	FR Cite
NPRM .....	01/00/24	

**Regulatory Flexibility Analysis Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** None.

**Additional Information:** RIN 1125-AB14 “Procedures for Asylum and

Withholding of Removal, Credible Fear and Reasonable Fear Review” has been consolidated into this RIN.  
*URL For More Information:* <http://www.regulations.gov>.  
*URL For Public Comments:* <http://www.regulations.gov>.  
*Agency Contact:* Raechel Horowitz, Chief, Immigration Law Division, Office of Policy, Department of Justice, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 1800, Falls Church, VA 22041, *Phone:* 703 305–0289, *Email:* [pao.eoir@usdoj.gov](mailto:pao.eoir@usdoj.gov).  
*Related RIN:* Related to 1125–AA94, Related to 1615–AC65, Related to 1615–AC42  
*RIN:* 1125–AB13

DOJ—EOIR

158. Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure [1125–AB18]

*Priority:* Other Significant.  
*Legal Authority:* 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1154–1155; 8 U.S.C. 1158; 8 U.S.C. 1182; 8 U.S.C. 1226; 8 U.S.C. 1229; 8 U.S.C. 1229a; 8 U.S.C. 1229b; 8 U.S.C. 1229c; 8 U.S.C. 1231; 8 U.S.C. 1254a; 8 U.S.C. 1255; 8 U.S.C. 1324d; 8 U.S.C. 1330; 8 U.S.C. 1361–1362; 28 U.S.C. 509–510; 28 U.S.C. 1746; sec. 2 Reorg. Plan No. 2 of 1950, 3 CFR 1949–1953, Comp. p. 1002; sec. 203 of Pub. L. 105–100, 111 Stat. 2196–200; secs. 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; sec. 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328  
*CFR Citation:* 8 CFR 1003; 8 CFR 1239; 8 CFR 1240; . . .  
*Legal Deadline:* None.  
*Abstract:* On December 16, 2020, by a rule titled Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure (RIN 1125–AA96) the Department of Justice (Department) amended its regulations regarding finality of case disposition at both the immigration court and appellate levels. The Department is planning to modify or rescind those regulations and to clarify the authority of immigration judges and the Board of Immigration Appeals (BIA) to administratively close, terminate, dismiss, and sua sponte reopen and reconsider a case.  
*Statement of Need:* On December 16, 2020, the Department amended the regulations related to processing of appeals and EOIR adjudicator authority to administratively close cases. Appellate Procedures and Decisional

Finality in Immigration Proceedings; Administrative Closure, 85 FR 81588 (RIN 1125–AA96). The Department has reconsidered its position on those matters and proposed to revise the regulations accordingly and make other related amendments. This proposed rule will clarify immigration judge and the Board authority, including clarifying general authority to administratively close, terminate, or dismiss a case under certain circumstances and the authority to sua sponte reopen and reconsider cases. The proposed rule also revises Board of Immigration Appeals standards involving adjudication timelines, briefing schedules, self-certification, remands, background checks, administrative notice, and voluntary departure. Moreover, the proposed rule rescinds the EOIR Director’s authority to issue decisions in certain cases, rescinds procedures for immigration judges to certify cases for quality assurance, and revises procedures for background checks, remand procedures for adjudication of voluntary departure, and for the forwarding of the record on appeal, as well as other minor revisions. The Department believes that this proposed rule is needed to provide guidance to EOIR adjudicators about the necessary or appropriate exercise of their general authorities to promote fairness and efficiency in proceedings.  
*Summary of Legal Basis:* The Attorney General has general authority under 8 U.S.C. 1103(g) to establish regulations related to the immigration and naturalization of noncitizens. Thus, this proposed rule utilizes such authority to propose revisions to the regulations regarding administrative determinations in immigration proceedings and the authorities of EOIR adjudicators.  
*Alternatives:* The December 2020 rule, 85 FR 81588 (Dec. 16, 2020), was enjoined nationwide in March 2021. *Nat’l Immigrant Just. Ctr. et al., v. EOIR et al.*, 21–CV–0056 (D.D.C. Jan 14, 2021). Unless the Department relies on litigation, there are no feasible alternatives to revising the regulations. Relying on litigation could be extremely time consuming and may introduce confusion as to whether the regulation is in effect. Thus, the Department considers this alternative to be an inadequate and inadvisable course of action.  
*Anticipated Cost and Benefits:* The Department is largely reinstating the briefing schedules and other appellate procedures that the December 2020 rule revised. As stated in the December 2020 rule, 85 FR at 81650, the basic briefing procedures have remained across rules; thus, the Department believes the costs to the public will be negligible, if any,

given that costs will revert back to those established for decades prior to the December 2020 rule. The proposed rule imposes no new additional costs, as much of the proposed rule involves internal case processing. For those provisions that constitute more than simple internal case processing measures, such as the amendments to the EOIR adjudicator’s administrative closure and termination authority, they likewise would not impose significant costs to the public. Indeed, such measures would generally reduce costs, as they facilitate and reintroduce various mechanisms for fair, efficient case processing.  
*Risks:* Without this rulemaking, the regulations will remain enjoined pending litigation (as described in the Alternatives section). This is inadvisable, as litigation typically takes an inordinate time to conclude. The Department strongly prefers proactively addressing the regulations through this proposed rule.  
*Timetable:*

Action	Date	FR Cite
NPRM .....	09/08/23	88 FR 62242
NPRM Comment Period End.	11/07/23	
Final Action .....	03/00/24	

*Regulatory Flexibility Analysis Required:* No.  
*Government Levels Affected:* None.  
*Additional Information:* Related to EOIR Docket No. 19–0022.  
*URL For More Information:* <http://www.regulations.gov>.  
*URL For Public Comments:* <http://www.regulations.gov>.  
*Agency Contact:* Raechel Horowitz, Chief, Immigration Law Division, Office of Policy, Department of Justice, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 1800, Falls Church, VA 22041, *Phone:* 703 305–0289, *Email:* [pao.eoir@usdoj.gov](mailto:pao.eoir@usdoj.gov).  
*Related RIN:* Related to 1125–AA96  
*RIN:* 1125–AB18

DOJ—EOIR

159. Hearing Requirements and Application Procedures for Asylum and Related Protection [1125–AB22]

*Priority:* Other Significant.  
*Legal Authority:* 8 U.S.C. 1103(g); 8 U.S.C. 1158; 8 U.S.C. 1229a  
*CFR Citation:* 8 CFR 1208.13; 8 CFR 1208.14; 8 CFR 1240.11.  
*Legal Deadline:* None.  
*Abstract:* On December 16, 2020, by the rule titled Procedures for Asylum and Withholding of Removal (RIN 1125–

AA93) the Department of Justice (Department) amended the regulations governing the adjudication of applications for asylum and related protection before EOIR, including requirements for filing a complete application and consequences for filing an incomplete application, filing and adjudication timelines for asylum and related protection in certain proceedings before EOIR, and amendments related to the information an immigration judge may consider when adjudicating applications for asylum and related protection. To revise the regulations related to EOIR adjudicatory procedures for asylum and related protection, the Department initially considered two separate rulemakings to generally require immigration judges to hold evidentiary hearings for asylum and related protection before adjudicating such applications (RIN 1125–AB22) and to reconsider the provisions that focus on the filing and adjudication of such applications (RIN 1125–AB15). After determining that these regulatory actions both relate to the procedures for adjudicating applications for asylum and related protection, the Department has decided to combine the two regulatory actions into a single rulemaking under RIN 1125–AB22 to rescind or modify the regulatory revisions made by Procedures for Asylum and Withholding of Removal (RIN 1125–AA93) and clarify that immigration judges must generally conduct an evidentiary hearing prior to adjudicating an application for asylum or related protection, consistent with *Matter of E–F–H–L–*, 26 I&N Dec. 319 (BIA 2014).

**Statement of Need:** This proposed rule will revise the regulations related to adjudicatory procedures for asylum and withholding of removal, including changes to asylum evidentiary hearings and pretermission of such applications. On December 16, 2020, the Department amended the regulations governing asylum and withholding of removal, including changes to what must be included with an application for it to be considered complete and the consequences of filing an incomplete application, and changes related to the 180-day asylum adjudications clock. Procedures for Asylum and Withholding of Removal, 85 FR 81698 (RIN 1125–AA93). In light of Executive Orders 14010 and 14012, 86 FR 8267 (Feb. 2, 2021) and 86 FR 8277 (Feb. 2, 2021), the Department reconsidered its position on those matters and now issues this proposed rule to revise the regulations accordingly.

**Summary of Legal Basis:** The Attorney General has general authority under 8

U.S.C. 1103(g) to establish regulations related to the immigration and naturalization of noncitizens. More specifically, under 8 U.S.C. 1158(d)(5)(B), the Attorney General has authority to provide by regulation additional conditions and limitations consistent with the INA for the consideration of asylum applications. Thus, this proposed rule utilizes such authority to propose revisions to the regulations related to EOIR adjudicatory procedures for asylum and withholding of removal pursuant, in part, to 8 U.S.C. 1229a(c)(4)(B).

**Alternatives:** The December 2020 rule, 85 FR 81698 (Dec. 16, 2020), was enjoined nationwide in January 2021. *See Nat'l Immigrant Just. Ctr. et al., v. EOIR et al.*, 21–CV–0056 (D.D.C. Jan 14, 2021). Unless the Department relies on litigation, there are no feasible alternatives to revising the regulations. Relying on litigation could be extremely time consuming and may introduce confusion as to whether the regulation is in effect. Additionally, without this proposed rule, the Department would have to rely on an uncertain legal and procedural landscape related to evidentiary hearings and pretermission. Thus, the Department considers this alternative to be an inadequate and inadvisable course of action.

**Anticipated Cost and Benefits:** The Department believes this proposed rule will not be economically significant. This proposed rule imposes no new additional costs to the Department or to respondents: respondents have always been required to submit complete asylum applications in order to have them adjudicated, and immigration judges have always maintained the authority to set deadlines. In addition, this proposed rule proposes no new fees. Additionally, evidentiary hearings for asylum and related protection are generally standard practice. Thus, the Department believes that the costs to the public will be negligible. Any new minimal cost would be limited to the cost of the public familiarizing itself with the proposed rule, although, as previously stated, the proposed rule restores most of the regulatory language to that which was in effect before the December 2020 rule. Further, an immigration judge's ability to set filing deadlines is already established by regulation, and filing deadlines for both applications and supporting documents are already well-established aspects of immigration court proceedings guided by regulations and the Office of the Chief Immigration Judge Practice Manual. Thus, the Department expects little in the proposed rule to require extensive familiarization.

**Risks:** Without this rulemaking, the regulations will remain enjoined pending litigation (as described in the Alternatives section). This is inadvisable, as litigation is unpredictable and often takes a long time to conclude. The Department strongly prefers proactively addressing the regulations through this proposed rule. Additionally, without this rulemaking, there will be a lack of clarity as to whether asylum hearings on the merits are a general practice or whether asylum applicants are generally entitled to such hearings.

#### Timetable:

Action	Date	FR Cite
NPRM .....	11/00/23	

#### Regulatory Flexibility Analysis

**Required:** No.

**Government Levels Affected:** None.

**Additional Information:** Former RIN 1125–AB15 merged into this rulemaking.

**URL For More Information:** <http://regulations.gov>.

**URL For Public Comments:** <http://regulations.gov>.

**Agency Contact:** Raechel Horowitz, Chief, Immigration Law Division, Office of Policy, Department of Justice, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 1800, Falls Church, VA 22041, Phone: 703 305–0289, Email: [pao.eoir@usdoj.gov](mailto:pao.eoir@usdoj.gov).

**RIN:** 1125–AB22

#### DOJ—EOIR

#### 160. Clarifying and Revising Custody Determination Procedures for Noncitizens Subject to Discretionary Detention (INA 236(a)/8 U.S.C. 1226 Detention) [1125–AB27]

**Priority:** Other Significant.

**Legal Authority:** 8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1226; . . .

**CFR Citation:** 8 CFR 1003.19; 8 CFR 1236.1; 8 CFR 236.1; 8 CFR 236.7; 8 CFR 1236.7; 8 CFR 1240.10; 8 CFR 1003.8; . . .

**Legal Deadline:** None.

**Abstract:** The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) and the Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) (collectively, the Departments) are planning to amend the regulations that govern detention and release determinations for noncitizens subject to the custody provisions in section 236 of the Immigration and Nationality Act (Act), 8 U.S.C. 1226(a). The goal of the proposed regulation



would be to clarify the scope and applicability of section 236(a) of the Act, 8 U.S.C. 1226(a), and address the burden and standard of proof for continued detention at initial custody determinations and any custody redetermination hearings. This rulemaking is consistent with Executive Order 14058, which directs agencies to take actions that improve service delivery and customer experience by decreasing administrative burdens, enhancing transparency, and improving the efficiency and effectiveness of government.

**Statement of Need:** The proposed rule is needed to bring clarity and uniformity to the procedures governing ICE initial custody decisions and IJ bond hearings for noncitizens subject to discretionary detention under INA 236(a). This rule will also revise the procedures for determining whether a noncitizen is properly subject to INA 236(c) detention. Additionally, this rule will clarify the detention authority that applies during the petition for review process for certain noncitizens seeking judicial review of their removal orders. Lastly, the proposed rule will make organizational changes to the structure of the EOIR regulations governing custody redetermination hearings and address outdated provisions in the Departments' custody and bond regulations. The Departments believe this rulemaking will help address issues that frequently arise in litigation brought by noncitizens challenging the Departments' existing custody and bond hearing procedures and it may also help to resolve differing interpretations among Federal circuit courts.

**Summary of Legal Basis:** The Attorney General has general authority under 8 U.S.C. 1103(g) to establish regulations related to the immigration and naturalization of noncitizens. More specifically, under section 441 of the Homeland Security Act (HSA), the Attorney General transferred the authority to oversee broad immigration enforcement functions, including detention and removal, to DHS. Additionally, pursuant to HSA 1101(a), the Attorney General retains and shares with DHS the authority to detain or authorize bond for noncitizens under INA 236(a).

**Alternatives:** Unless the Departments rely on piecemeal litigation to resolve the various issues that arise with respect to the existing custody and bond hearing procedures, there are no feasible alternatives to this rulemaking.

**Anticipated Cost and Benefits:** DOJ and DHS are currently considering the specific cost and benefit impacts of the proposed provisions.

**Risks:** Without this rulemaking, the procedures and standards governing ICE custody procedures and IJ bond hearings will continue to be subject to litigation and judicial interpretation which results in a lack of nationwide uniformity. Moreover, the Departments are concerned that the current regulatory framework risk allocating ICE's scarce detention resources on noncitizens whose flight risk, if any, could be managed effectively in the community, rather than on those whose detention is necessary. The Departments strongly prefer proactively addressing the regulations through this proposed rule.

#### Timetable:

Action	Date	FR Cite
NPRM .....	12/00/23	

**Regulatory Flexibility Analysis Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** Federal.

**Agency Contact:** Raechel Horowitz, Chief, Immigration Law Division, Office of Policy, Department of Justice, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 1800, Falls Church, VA 22041, Phone: 703 305-0289, Email: pao.eoir@usdoj.gov.  
RIN: 1125-AB27

**BILLING CODE 4410-BP-P**

## U.S. DEPARTMENT OF LABOR

### Fall 2023 Statement of Regulatory Priorities

#### Introduction

The Department's Fall 2023 Regulatory Agenda represents Acting Secretary Su's commitment to build a worker-centric economy and good jobs that change lives. These rules will advance the Department's mission to foster, promote, and develop the welfare of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights. Under Acting Secretary Su's leadership, the Department's rulemaking is focused on centering workers and improving job quality, empowering and protecting workers and their families, and promoting equity in opportunity and pathways to good jobs for all workers.

Since the start of the Biden Administration, the Department of Labor has pursued rulemaking to advance the Administration's priorities. To create and sustain good jobs, the

Department has focused rulemaking on worker health and safety, fair wages, and supporting unions and workers who are organizing unions. The Department is advancing equity and supporting marginalized communities through rulemaking that bolsters protections for workers from discrimination. To tackle the climate crisis, the Department is pursuing a rulemaking on heat illness prevention in the workplace. Under the Administration's priority to improve service delivery, customer experience and reduce administrative burdens, the Department continues to regulate employer-provided retirement security and health care. These include the following rulemakings:

- We issued a Final Rule to update the regulations implementing Davis-Bacon and Related Acts—the most comprehensive review of the regulation in 40 years—to ensure employers on federally funded or assisted construction projects pay locally prevailing wages to construction workers. The Final Rule will speed up prevailing wage updates, creating efficiencies in the current system and ensuring that prevailing wages keep up with actual wages. Over time, this would mean higher wages for workers, which is especially important given the administration's investments under the Investing in America Agenda.

- We finalized the rescission of certain provisions related to the religious exemption for federal contractors and subcontractors. The rescission returned OFCCP to its longstanding approach of ensuring that the religious exemption contained in Executive Order 11246 is applied consistently with nondiscrimination principles of Title VII of the Civil Rights Act of 1964, as amended. The rescission reaffirmed nondiscrimination protections for employees of federal contractors.

- We finalized the rulemaking to modify the agency's procedures for using resources strategically to remove barriers to equal employment opportunity. The rule strengthened OFCCP's ability to resolve potential employment discrimination at federal contractor workplaces, which created hurdles to effective enforcement.

- We issued a Final Rule that requires employers to check a box disclosing whether they are federal contractors or subcontractors on their "LM-10" forms, which are filed if they hire a consultant to persuade their workers about labor relations activities or to "surveil" employees or unions involved in a labor dispute.

- We issued a proposed rule to amend the existing standards to better

protect miners against occupational exposure to respirable crystalline silica, a carcinogenic hazard, and to improve respiratory protection for all airborne hazards.

- We issued a proposed rule to provide guidance that would help employers and workers determine whether a worker is an employee or an independent contractor under the Fair Labor Standards Act. The proposed rule would combat employee misclassification that leads to workers being denied their rights and protections under federal labor standards.

- Along with the Departments of Treasury and Health and Human Services, we issued a Final Rule implementing the No Surprises Act, which aims to protect consumers against surprise medical bills. The Final Rule makes certain medical claims payment processes more transparent for providers and clarifies the process for providers and health insurance companies to resolve their disputes.

- Also, with the Departments of Treasury and Health and Human Services, we issued proposed rules to better ensure that people seeking coverage for mental health and substance use disorder care can access treatment as easily as people seeking coverage for medical treatments. The proposed rules aim to fully protect the rights of people seeking mental health and substance use disorder benefits, under the Mental Health Parity and Addition Equity Act, and to provide clear guidance to plans and issuers on how to comply with the law's requirements.

The 2023 Regulatory Plan highlights the Labor Department's most noteworthy and significant rulemaking efforts, with each addressing the top priorities of its regulatory agencies: Employee Benefits Security Administration (EBSA), Employment and Training Administration (ETA), Mine Safety and Health Administration (MSHA), Office of Federal Contract Compliance Programs (OFCCP), Occupational Safety and Health Administration (OSHA), Office of Workers' Compensation Programs (OWCP), and Wage and Hour Division (WHD). These regulatory priorities exemplify the Acting Secretary's vision to center workers in the economy; protect workers' rights, wages and safety on the job; and promote equity, job quality, and pathways to good jobs for all workers, especially those who have historically been left behind.

The Department's regulatory priorities also reflect our robust engagement process with stakeholders and our strong culture of evidence-based

decision making. Through regular stakeholder meetings, public hearings, Small Business Advocacy Review Panels, and public comments on proposed regulations, the Department engages with diverse stakeholders to seek input on our regulatory agenda overall or feedback on proposed rules. We intentionally seek input from members of the public who have not typically participated in the regulatory process, including workers with disabilities, union members, small businesses, low-paid workers, and immigrant workers, both as a Department and in cooperation with federal partners like the SBA Office of Advocacy. Among the specific rules described below, we include further details on previous stakeholder engagement and future opportunities for stakeholder engagement.

### Centering Workers and Improving Job Quality

The Department's regulatory priorities reflect the Acting Secretary's focus on centering workers in the economy and improving job quality. This means protecting workers right to organize and form a union and ensuring the creation of good jobs by upholding strong labor and equity standards across every aspect of hiring and employment.

- WHD will finalize updates to the executive, administrative, and professional exemption for the Fair Labor Standards Act. Updating the salary threshold would ensure that middle class jobs pay middle class wages, extending important overtime pay protections to millions of workers and raising their pay. Prior to issuing the proposed rule, the Department conducted 27 virtual listening sessions around the country with more than 2,000 participants to gather information and input about possible changes to the overtime regulations. In addition to reaching out to national stakeholders, the Wage and Hour Division conducted 10 regional listening sessions for workers and worker advocates as well as employers and business leaders. This was an important and valuable step in the regulatory development process.

- WHD will finalize regulations that offer certain employees employed under the federal service contracts a right of first refusal of employment when contracts change over, thereby promoting the retention of skilled workers in the federal services workforce.

### Empowering and Protecting Workers and Their Families

The Department's regulatory priorities reflect the Acting Secretary's focus on

protecting workers' rights, wages and safety on the job and fighting discrimination in the workplace. This means leveling the playing field for America's workers by ensuring all workers get the wages they've earned, especially those in low-wage and historically underserved communities.

- WHD will finalize regulations that address and clarify the distinction between employees and independent contractors under the Fair Labor Standards Act. This proposed rule also benefited from extensive stakeholder engagement prior to its issuance.

- ETA is proposing regulations that will ensure that H-2 visa programs promote worker voice and worker protections.

Under this priority, the Department is also focusing on safeguarding workers' hard-earned benefits and pensions and ensuring access to health benefits, including mental health and substance use disorder benefits.

- EBSA will finalize joint rulemaking with the Departments of Health and Human Services and Treasury, implementing the Mental Health Parity and Addiction Equity Act (MHPAEA) will promote compliance and address amendments to the Act from the Consolidated Appropriations Act of 2021 to ensure parity of mental health and substance abuse disorder benefits so workers can access mental health care as easily as other types of care.

- EBSA, along with the Departments of Human and Human Services and Treasury, will finalize joint rulemaking regarding coverage of certain preventive services under the Affordable Care Act, which would establish a new pathway for individuals to obtain contraceptive services at no cost.

- EBSA is proposing regulations to reevaluate the criteria for a group or association of employers to be able to sponsor a multiple employer group health plan.

- EBSA is proposing to update the definition of the term "fiduciary" for a retirement plan to ensure retirement savers get sound investment advice free from conflicts of interest.

The Department's health and safety regulatory proposals are aimed at eliminating preventable workplace injuries, illnesses, and fatalities. Workplace safety also protects workers' economic security, ensuring that illness and injury do not force families into poverty. Our efforts will prevent workers from having to choose between their lives and their livelihood.

- OSHA will propose an Infectious Diseases rulemaking to protect employees in healthcare and other high-risk environments from exposure to and

transmission of persistent and new infectious diseases, ranging from ancient scourges such as tuberculosis to newer threats such as Severe Acute Respiratory Syndrome (SARS), the 2019 Novel Coronavirus (COVID-19), and other diseases.

- OSHA will complete small business consultations as its next step in advancing rulemaking on heat illness prevention to protect workers from heat hazards in the workplace. Increased temperatures are posing a serious threat to workers laboring outdoors and in non-climate controlled indoor settings. Exposure to excessive heat is not only a hazard in itself, causing heat illness and even death; it is also an indirect hazard linked to the loss of cognitive skills which can also lead to workplace injuries and worker deaths. Protecting workers will help to save lives while we confront the growing threat of climate change.

- OSHA will propose regulations that update standards for emergency response and preparedness to reflect the full range of hazards or concerns currently facing emergency responders and other workers providing skilled support and the major changes in performance specifications for protective clothing and equipment.

- MSHA will finalize a new silica standard to effectively address health hazards and prevent irreversible diseases with a goal of ensuring that all miners are safe at their workplaces.

- MSHA will finalize a rule establishing that mine operators must develop and implement a written safety program for mobile and power haulage equipment used at surface mines and surface areas of underground mines, in order to reduce accidents and provide safer workplaces for miners.

### Promoting Equity in Opportunity and Pathways to Good Jobs for All Workers

The Department's regulatory priorities reflect the Acting Secretary's focus on promoting access to good jobs free from discrimination and harassment, especially for those who have historically been left behind, and growing the workforce that brings in all of America, with a focus on expanding opportunities for women and people of color.

- ETA will ensure job-seekers can more easily get the support they need by issuing final rules updating the Wagner-Peyser Employment Service regulations.

- ETA is focused on apprenticeship and is proposing regulations for a National Apprenticeship System that is more responsive to worker and employer needs. This proposed rule was extensively informed by the

deliberations of the Department's reconstituted Advisory Committee on Apprenticeships.

### DOL—WAGE AND HOUR DIVISION (WHD)

Proposed Rule Stage

#### 161. Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales, and Computer Employees [1235-AA39]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect the private sector under Public Law 104-4.

*Legal Authority:* 29 U.S.C. 201 *et seq.*; 29 U.S.C. 213

*CFR Citation:* 29 CFR 541.

*Legal Deadline:* None.

*Abstract:* The Department of Labor (Department) proposes updating and revising the regulations issued under the Fair Labor Standards Act implementing the exemptions from minimum wage and overtime pay requirements for executive, administrative, professional, outside sales, and computer employees. Significant proposed revisions include increasing the standard salary level to the 35th percentile of weekly earnings of full-time salaried workers in the lowest-wage Census Region (currently the South) \$1,059 per week (\$55,068 annually for a full-year worker) and increasing the highly compensated employee total annual compensation threshold to the annualized weekly earnings of the 85th percentile of full-time salaried workers nationally (\$143,988). The Department is also proposing to add to the regulations an automatic updating mechanism that would allow for the timely and efficient updating of all the earnings thresholds. For additional information, please see the Department's fall regulatory plan narrative statement.

*Statement of Need:* One of the primary goals of this rulemaking is to update the salary level requirement of the section 13(a)(1) exemption. A salary level test has been part of the regulations since 1938 and it has been long recognized that the best single test of the employer's good faith in attributing importance to the employee's services is the amount they pay for those services. In prior rulemakings, the Department explained its commitment to update the standard salary level and Highly Compensated Employees (HCE) total compensation levels more frequently. Regular updates promote

greater stability, avoid disruptive salary level increases that can result from lengthy gaps between updates and provide appropriate wage protection.

*Summary of Legal Basis:* Section 13(a)(1) of the FLSA, codified at 29 U.S.C. 213(a)(1), exempts any employee employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the [Administrative Procedure Act.]) The FLSA does not define the terms executive, administrative, professional, or outside salesman. However, Congress explicitly delegated to the Secretary of Labor the power to define and delimit the specific terms of the exemptions through regulations. Accordingly, the Department issues regulations at 29 CFR part 541 defining the scope of the section 13(a)(1) exemptions.

*Alternatives:* The Department considered a range of alternatives before selecting its proposed methods for updating the standard salary level and the HCE compensation level. The Department proposes to update the standard salary level using earnings for the 35th percentile of full-time salaried workers in the lowest range Census Region (the South), equivalent to \$1,059 per week based on current data. Alternatives considered for the standard salary level are: (1) 20th percentile of earnings of nonhourly full-time workers in the South Census region and the retail industry nationally equivalent to \$822 per week; (2) 10th percentile of earnings of likely exempt workers, equivalent to \$925 per week; (3) 40th percentile of earnings of nonhourly full-time workers in the South Census region, equivalent to \$1,145 per week; and (4) a methodology based on the historical short test salary level, equivalent to \$1,378 per week.

The Department proposes to update the HCE compensation level using earnings from the 85th percentile of all full-time salaried workers nationally, equivalent to \$143,988 per year. The Department also considered the following alternative methods to set the HCE compensation levels: (1) 80th percentile of nonhourly full-time workers nationally, equivalent to \$125,268 annually; and (2) 90th percentile of nonhourly full-time workers nationally, equivalent to \$172,796 annually.

The public is invited to provide comments on the proposed revisions and possible alternatives.

*Anticipated Cost and Benefits:* The Department quantified three direct costs

to employers in this analysis: (1) regulatory familiarization costs; (2) adjustment costs; and (3) managerial costs. The Department estimated in Year 1, regulatory familiarization costs would be \$427.2 million, adjustment costs would be \$240.8 million, and managerial costs would be \$534.9 million. Total direct employer costs in Year 1 would be \$1.2 billion. The Department additionally estimated that the proposed rule over its first 10 years, would transfer approximately \$1.3 billion per year from employers to employees in the form of increased wages.

**Risks:** This action does not affect public health, safety, or the environment.

**Timetable:**

Action	Date	FR Cite
NPRM .....	09/08/23	88 FR 62152
NPRM Comment Period End.	11/07/23	
Final Rule .....	04/00/24	

**Regulatory Flexibility Analysis Required:** Yes.

**Small Entities Affected:** Businesses, Governmental Jurisdictions, Organizations.

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

**Agency Contact:** Amy DeBisschop, Director of the Division of Regulations, Legislation, and Interpretation, Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW, FP Building, Room S-3502, Washington, DC 20210, Phone: 202 693-0406.

RIN: 1235-AA39

## DOL—WHD

Final Rule Stage

### 162. Nondisplacement of Qualified Workers Under Service Contracts [1235-AA42]

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

**Legal Authority:** E.O. 14055

**CFR Citation:** 29 CFR 9.

**Legal Deadline:** None.

**Abstract:** On November 18, 2021, President Biden signed Executive Order 14055 requiring the Secretary of Labor to issue final regulations on the nondisplacement of qualified workers under service contracts. Implementation of this Executive Order will promote retention of experienced and skilled employees working on federal service contracts. Service work supporting federal government functions occurs all

over the country, from federal building maintenance to services provided on military bases to skilled technicians operating and maintaining federal equipment. Under this Executive Order, when a federal service contract transitions from one contractor to another, the new contractor will be required to offer jobs to qualified employees who worked for the previous contractor and performed their jobs well. This prevents disruptions in federal services, makes it easier for employers to find workers who are already trained for the job, and saves taxpayer dollars.

**Statement of Need:** Executive Order 14055 requires the Secretary of Labor to issue regulations on the nondisplacement of qualified workers under service contracts.

**Summary of Legal Basis:** President Biden issued Executive Order 14055 pursuant to his authority under “the Constitution and the laws of the United States,” expressly including the Procurement Act. 86 FR 66397. The Procurement Act authorizes the President to “prescribe policies and directives that the President considers necessary to carry out” the statutory purposes of ensuring “economical and efficient” government procurement and administration of government property. 40 U.S.C. 101.121(a). Executive Order 14055 directs the Secretary to issue regulations to “implement the requirements of this order.” 86 FR 66399.

**Alternatives:** The Department has discussed a few specific provisions in which limited alternatives are possible.

First, in cases where a prime contract is above the simplified acquisition threshold, but their subcontract falls below this threshold, the Department could potentially have discretion to exclude these subcontracts from the requirements of this proposed rule. However, the Department stated in the NPRM that, consistent with the language in the Executive Order, where a prime contract is covered by the rule, all subcontracts for services, regardless of size, would also be covered. Second, the Department has some discretion in defining the specific analysis that must be completed by contracting agencies regarding location continuity. The Department is considering whether to require contracting officers to analyze additional factors when determining whether to decline to require location continuity. Any requirement of a more in-depth analysis could potentially increase costs for contracting agencies.

**Anticipated Cost and Benefits:** The rule could result in costs for covered contractors and contracting agencies in

the form of rule familiarization costs, implementation costs, and recordkeeping costs. The rule would increase the use of a carryover workforce which would reduce disruption in the delivery of services during the period of transition between contractors, maintains physical and information security, and provides the Federal Government with the benefits of an experienced and well-trained workforce that is familiar with the Federal Government’s personnel, facilities, and requirements.

The Department estimated both familiarization costs, implementation costs and familiarization costs. Costs in Year 1 consists of \$11,124,370 in rule familiarization costs, \$35,471,685 in implementation costs (\$7,518,342 for contractors and \$27,953,342 for contracting agencies), and \$6,014,674 in recordkeeping costs. Therefore, total Year 1 costs are \$52,610,728. Costs in the following years consist only of implementation and recordkeeping costs and amount to \$41,486,358. Average annualized costs over 10 years are \$43 million using a 7 percent discount rate, and \$52 million using a 3 percent discount rate.

**Risks:** This action does not affect the public health, safety, or the environment.

**Timetable:**

Action	Date	FR Cite
NPRM .....	07/15/22	87 FR 42552
NPRM Comment Period End.	08/15/22	
Final Rule .....	11/00/23	

**Regulatory Flexibility Analysis Required:** No.

**Government Levels Affected:** Federal.

**Agency Contact:** Amy DeBisschop, Director of the Division of Regulations, Legislation, and Interpretation, Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW, FP Building, Room S-3502, Washington, DC 20210, Phone: 202 693-0406.

RIN: 1235-AA42

## DOL—WHD

### 163. Employee or Independent Contractor Classification Under the Fair Labor Standards Act [1235-AA43]

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

**Unfunded Mandates:** This action may affect the private sector under Public Law 104-4.

**Legal Authority:** 52 Stat. 1060, as amended; 29 U.S.C. 201-219

*CFR Citation:* 29 CFR 795; 29 CFR 780; 29 CFR 788.

*Legal Deadline:* None.

*Abstract:* On January 7, 2021, the Department of Labor (Department) published a final rule on independent contractor status under the Fair Labor Standards Act (FLSA). See 86 FR 1168 (2021 IC Rule). The Department subsequently published final rules to delay and withdraw the 2021 IC Rule on March 4, 2021, and May 6, 2021, respectively. See 86 FR 12535 (Delay Rule); 86 FR 24303 (Withdrawal Rule). On March 14, 2022, a district court in the Eastern District of Texas vacated the Department's Delay and Withdrawal Rules, concluding that the 2021 IC Rule became effective as of March 8, 2021. The Department has appealed the district court's decision. The Department continues to believe that the 2021 IC Rule does not fully comport with the FLSA's text and purpose as interpreted by courts and has proposed to rescind the 2021 IC rule and set forth an analysis for determining employee or independent contractor status under the Act that is more consistent with existing judicial precedent and the Department's longstanding guidance prior to the 2021 IC rule. The Department published an NPRM on October 13, 2022. For additional information, please see the Department's fall regulatory plan narrative statement.

*Statement of Need:* The Department believes it is appropriate to consider rescinding the 2021 IC Rule and setting forth an analysis for determining employee or independent contractor status under the Act that is more consistent with existing judicial precedent and the Department's longstanding guidance prior to the 2021 IC Rule.

*Summary of Legal Basis:* The Department's authority to interpret the analysis for determining whether workers are employees or independent contractors under the FLSA comes with its authority to administer and enforce the Act. See 29 U.S.C. 201–219; see also *Herman v. Fabri-Centers of Am., Inc.*, 308 F.3d 580, 592–93 & n.8 (6th Cir. 2002) (noting that “[t]he Wage and Hour Division of the Department of Labor was created to administer the Act” while agreeing with the Department's interpretation of one of the Act's provisions); *Dufrene v. Browning-Ferris, Inc.*, 207 F.3d 264, 267 (5th Cir. 2000) (“By granting the Secretary of Labor the power to administer the FLSA, Congress implicitly granted him the power to interpret.”); *Condo v. Sysco Corp.*, 1 F.3d 599, 603 (7th Cir. 1993) (same).

*Alternatives:* The Department assessed four regulatory alternatives in

the proposed rule in addition to what it proposed. For the first alternative, the Department considered codifying the common law control test, which is used to distinguish between employees and independent contractors under some other Federal laws, such as the Internal Revenue Code. For the second alternative, the Department considered codifying an ABC test to determine independent contractor status under the FLSA similar to the ABC test recently adopted under California law. For the third alternative, the Department considered a proposed rule that would not fully rescind the 2021 IC Rule and instead retain some aspects of that rule. For the fourth alternative, the Department considered rescinding the 2021 IC Rule and providing guidance on employee or independent contractor classification through subregulatory guidance instead of through new regulations.

*Anticipated Cost and Benefits:* The total one-time regulatory familiarization costs for establishments, governments, and independent contractors are estimated to be \$408 million. Regulatory familiarization costs in future years were assumed to be de minimis. Employers and independent contractors would continue to familiarize themselves with the applicable legal framework in the absence of the rule, so this rulemaking would not be expected to impose costs after the first year. This would amount to a 10-year annualized cost of \$56.4 million at a discount rate of 3 percent or \$54.3 million at a discount rate of 7 percent.

Benefits would include increased consistency with existing judicial precedent and the Department's longstanding guidance, as well as possibly reducing the occurrence of misclassification.

*Risks:* This action does not affect public health, safety, or the environment.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/13/22	87 FR 62218
NPRM Comment Period Extended.	10/26/22	87 FR 64749
NPRM Comment Period Extended End.	12/13/22	
Final Rule .....	11/00/23	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Small Entities Affected:* Businesses, Governmental Jurisdictions, Organizations.

*Government Levels Affected:* Undetermined.

*Agency Contact:* Amy DeBisschop, Director of the Division of Regulations, Legislation, and Interpretation, Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW, FP Building, Room S–3502, Washington, DC 20210, *Phone:* 202 693–0406.

*RIN:* 1235–AA43

## DOL—EMPLOYMENT AND TRAINING ADMINISTRATION (ETA)

Proposed Rule Stage

### 164. Improving Protections for Workers in Temporary Agricultural Employment in the United States [1205–AC12]

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

*Legal Authority:* 8 U.S.C. 1188; 29 U.S.C. 49 *et seq.*

*CFR Citation:* 29 CFR 501; 20 CFR 651; 20 CFR 653; 20 CFR 654; 20 CFR 655; 20 CFR 658.

*Legal Deadline:* None.

*Abstract:* The Department of Labor's (DOL) Employment and Training Administration and Wage and Hour Division propose to amend regulations to improve working conditions and protections for workers engaged in temporary agricultural employment in the United States; and strengthen protections in the recruitment, job order clearance, and oversight processes. The proposed regulatory changes involve the Employment Service and the H–2A non-immigrant visa program at 29 CFR part 501 and 20 CFR parts 651, 653, 654, 655, and 658.

The Department has identified a need to strengthen and clarify protections for all temporary agricultural workers, including U.S. workers and workers employed through the H–2A temporary agricultural program. The H–2A temporary agricultural program allows agricultural employers to perform agricultural labor or services of a temporary or seasonal nature so long as there are not sufficient able, willing, and qualified U.S. workers to perform the work and the employment of H–2A workers does not adversely affect the wages and working conditions of similarly employed workers in the United States. The use of the H–2A program has grown substantially in recent years and the Department is committed to protecting agricultural workers in light of their significant vulnerabilities.

*Statement of Need:* The Department will propose revisions to the H–2A regulations and the Employment Service regulations that will strengthen

protections for agricultural workers and enhance the Department's enforcement capabilities against fraud and program violations. The Department has determined the proposed revisions will help prevent exploitation and abuse of agricultural workers and ensure that employers do not gain from their violations or contribute to economic and workforce instability by circumventing the law.

**Summary of Legal Basis:** The Department's proposals to strengthen protections and improve compliance are aimed at ensuring that the Department can better fulfill its statutory responsibility at 8 U.S.C. 1188(a)(1) to certify that: (1) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition; and (2) the employment of H-2A workers will not adversely affect the wages and working conditions of workers in the United States similarly employed, and its responsibility under the Wagner-Peyser Act at 29 U.S.C. 49b to effectively assist in coordinating the State public employment service offices throughout the country.

**Alternatives:** The Department has considered alternatives but believes that rulemaking to update the H-2A regulations and the Employment Service regulations is a reasonable approach to better ensure the necessary worker protections are available and enforceable.

**Anticipated Cost and Benefits:** The Department estimates that the proposed rule would result in costs and transfer payments. As shown in Exhibit 1, the proposed rule is expected to have an annualized cost of \$2.03 million and a total 10-year quantifiable cost of \$14.24 million, each at a discount rate of 7 percent. The proposed rule is estimated to result in annual transfer payments from H-2A employers to H-2A employees of \$12.81 million and total 10-year transfer payments of \$89.95 million at a discount rate of 7 percent.

The benefits are described above and include preventing exploitation of vulnerable workers and ensuring that employers do not benefit from exploitation.

**Risks:** To be determined.

**Timetable:**

Action	Date	FR Cite
NPRM .....	09/15/23	88 FR 63750
NPRM Comment Period End.	11/14/23	
Final Rule .....	04/00/24	

**Regulatory Flexibility Analysis Required:** Yes.

**Small Entities Affected:** Businesses, Governmental Jurisdictions.

**Government Levels Affected:** Local, Tribal.

**Agency Contact:** Brian Pasternak, Administrator, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Office of Foreign Labor Certification, Room N-5311, FP Building, Washington, DC 20210, Phone: 202 693-8200, Email: [pasternak.brian@dol.gov](mailto:pasternak.brian@dol.gov).

**RIN:** 1205-AC12

## DOL—ETA

### 165. National Apprenticeship System Enhancements [1205-AC13]

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

**Legal Authority:** The National Apprenticeship Act, as amended (50 Stat. 664) 29 U.S.C. 50

**CFR Citation:** 29 CFR 29; 29 CFR 30.

**Legal Deadline:** None.

**Abstract:** The regulations at 29 CFR part 29 addressing labor standards of apprenticeship and the governance of the National Apprenticeship System were last updated in October 2008 to increase administrative flexibility, ensure program quality, and promote registered apprenticeship opportunity. The Department plans to revise these regulations to strengthen, expand, modernize, and diversify the National Apprenticeship System by enhancing worker protections and equity, improving the quality of registered apprenticeships, revising the state governance provisions, and more clearly establishing critical pipelines to registered apprenticeships such as pre-apprenticeships so that the National Apprenticeship System is more responsive to current worker and employer needs. The Department will also make technical and conforming adjustments to the current text of 29 CFR part 30 (governing equal employment opportunity in apprenticeships) as appropriate. For additional information, please see the Department's regulatory plan narrative statement.

**Statement of Need:** The regulations governing the minimum labor standards for the registration of apprenticeship programs at Title 29 of the Code of Federal Regulations (CFR) part 29 have not been updated since 2008. With this action, the Department seeks to ensure that the regulatory framework for the Registered Apprenticeship System remains current with a range of emerging apprenticeship practices and

program structures that have developed since that time. The proposed revisions will enable the Registered Apprenticeship System to continue its vital role in developing a skilled, competitive American workforce.

**Summary of Legal Basis:** The National Apprenticeship Act of 1937 (also known as the Fitzgerald Act), 29 U.S.C. 50, gives the Secretary broad power to promote, create, and set standards for apprenticeship programs. The Act authorizes and directs the Secretary to formulate and promote the furtherance of labor standards necessary to safeguard the welfare of apprentices, to extend the application of such standards by encouraging the inclusion thereof in contracts of apprenticeship, to bring together employers and labor for the formulation of programs of apprenticeship, to cooperate with State agencies engaged in the formulation and promotion of standards of apprenticeship, and to cooperate with the Secretary of Education in accordance with section 17 of title 20.

**Alternatives:** Alternatives are described in the text of the NPRM, and the public will be provided an opportunity to comment upon them.

**Anticipated Cost and Benefits:** Registered apprenticeships provide individuals with valuable training and skill development, and provide businesses with a structure for developing a diverse pool of skilled workers. Although the Department is unable to quantify the anticipated benefits due to data limitations, the proposed rule is expected to result in annualized costs of \$152 million during the first 10 years (2025–2034) at a discount rate of 7 percent based on preliminary estimates.

**Risks:** This action does not affect public health, safety, or the environment.

**Timetable:**

Action	Date	FR Cite
NPRM .....	11/00/23	

**Regulatory Flexibility Analysis Required:** Yes.

**Small Entities Affected:** Businesses, Governmental Jurisdictions, Organizations.

**Government Levels Affected:** Federal, State.

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

**Agency Contact:** John V. Ladd, Administrator, Office of Apprenticeship, Department of Labor, Employment and Training Administration, 200 Constitution

Avenue NW, FP Building, Room C–5311, Washington, DC 20210, *Phone*: 202 693–2796, *Fax*: 202 693–3799, *Email*: ladd.john@dol.gov.

*RIN*: 1205–AC13

## DOL—ETA

Final Rule Stage

### 166. Wagner-Peyser Act Staffing [1205–AC02]

*Priority*: Other Significant.

*Legal Authority*: Wagner-Peyser Act sec. 12 (29 U.S.C. 49k)

*CFR Citation*: 20 CFR 651; 20 CFR 652; 20 CFR 653; 20 CFR 658.

*Legal Deadline*: None.

*Abstract*: The Department proposed to revise the Wagner-Peyser Act regulations regarding Employment Services (ES) staffing to require that states use state merit staff to provide ES services, including Migrant and Seasonal Farmworker (MSFW) services, and to improve service delivery.

*Statement of Need*: The Department identified areas of the regulation that changed to create a uniform standard of ES services provision for States.

*Summary of Legal Basis*: The Department determined that it is vital for the ES to be administered so that States deliver services effectively and equitably to unemployment insurance beneficiaries and other ES customers.

*Alternatives*: Two alternatives will be considered, and the public had the opportunity to comment on these alternatives during the comment period of the NPRM.

*Anticipated Cost and Benefits*: The proposed rule was estimated to have one-time rule familiarization costs of \$4,205 in 2020 dollars, as well as unknown transition costs. The proposed rule also estimated the rule to have annual transfer payments of \$9.6 million for three of the five States that currently have non-State merit staff providing some labor exchange services; transfer payments are monetary payments from one group to another, such as wages shifting from one employer to another, that do not affect total resources available to society. The transfer payments for this proposed rule were the estimated wage cost increases to the States associated with employee wages and fringe benefits. In the NPRM, the Department solicited comments from stakeholders and the public on the unknown transition costs, plus transfer payments that would be incurred by any States with some non-State merit staff providing labor exchange services.

*Risks*: This action does not affect the public health, safety, or the environment.

*Timetable*:

Action	Date	FR Cite
NPRM .....	04/20/22	87 FR 23700
NPRM Comment Period End.	06/21/22	
Final Rule .....	11/00/23	

*Regulatory Flexibility Analysis*

*Required*: Undetermined.

*Government Levels Affected*: State.

*Agency Contact*: Kimberly Vitelli, Administrator, Office of Workforce Investment, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, FP Building, Room C–4526, Washington, DC 20210, *Phone*: 202 693–3980, *Email*: vitelli.kimberly@dol.gov.

*RIN*: 1205–AC02

## DOL—EMPLOYEE BENEFITS SECURITY ADMINISTRATION (EBSA)

Proposed Rule Stage

### 167. Retirement Security Rule: Definition of an Investment Advice Fiduciary [1210–AC02]

*Priority*: Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates*: This action may affect the private sector under Public Law 104–4.

*Legal Authority*: 29 U.S.C. 1002; 29 U.S.C. 1135; Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 252 (2020)

*CFR Citation*: 29 CFR 2510.3–21.

*Legal Deadline*: None.

*Abstract*: This rulemaking would amend the regulatory definition of the term fiduciary set forth at 29 CFR 2510.3–21(c) to more appropriately define when persons who render investment advice for a fee to employee benefit plans and IRAs are fiduciaries within the meaning of section 3(21) of ERISA and section 4975(e)(3) of the Internal Revenue Code. The amendment would take into account practices of investment advisers, and the expectations of plan officials and participants, and IRA owners who receive investment advice, as well as developments in the investment marketplace, including in the ways advisers are compensated that can subject advisers to harmful conflicts of interest. In conjunction with this rulemaking, EBSA also proposed amendments to existing prohibited transaction exemptions to ensure consistent protection of employee benefit plan and IRA investors.

*Statement of Need*: Many protections, duties, and liabilities in ERISA hinge on fiduciary status; therefore, the determination of who is a fiduciary is of central importance. The Department's existing regulatory definition of an investment advice fiduciary, adopted in 1975, established a five-part test for status as a fiduciary. The 1975 regulation's five-part test is not founded in the statutory text of ERISA, does not take into account the current nature and structure of many individual account retirement plans and IRAs, is inconsistent with the reasonable expectations of plan officials and participants, and IRA owners who receive investment advice, and allows many investment advice providers to avoid status as a fiduciary under federal pension laws. Under ERISA, fiduciaries must avoid conflicts of interest or comply with a prohibited transaction exemption with conditions designed to protect retirement investors. A wide and compelling body of evidence shows that conflicts of interest and forms of compensation that can subject advisers to harmful conflicts of interest, if left unchecked, too often result in biased investment advice and resulting harm to retirement investors. In conjunction with this rulemaking, EBSA also proposed amendments to existing prohibited transaction exemptions to ensure consistent protection of employee benefit plan and IRA investors.

*Summary of Legal Basis*: The Department is proposing the amendment to its regulation defining a fiduciary pursuant to authority in ERISA section 505 (29 U.S.C. 1135) and section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 252 (2020).

*Alternatives*: The Department considered as an alternative leaving the 1975 regulation in place without change.

*Anticipated Cost and Benefits*: The proposed amendment to the 1975 regulation would extend the protections associated with fiduciary status to more advice arrangements. The proposed regulation and associated prohibited transaction exemptions are expected to require providers of investment advice to adhere to a best interest standard, charge no more than reasonable compensation, eliminate or mitigate conflicts of interest, and make important disclosures to their customers, among other things. These protections would deliver substantial gains for retirement investors and economic benefits that more than justify the costs. The costs of the regulation are largely expected to stem from compliance with the associated prohibited transaction



exemptions. Estimates of the cost of compliance are reflected in the notice of proposed rulemaking.

**Risks:** The Department believes that the 1975 regulation must be revised to align with retirement investors' reasonable expectations regarding their relationships with investment advice providers and to reflect developments in the investment advice marketplace since the 1975 regulation was adopted. Failure to appropriately define an investment advice fiduciary under ERISA is likely to expose retirement investors to conflicts of interest that will erode retirement savings. The risks are especially great with respect to recommendations to roll assets out of ERISA-covered plans to IRAs because of the central importance of retirement plan savings to workers, the relative size of rollover transactions, and the technical requirements of the current fiduciary regulation, which have encouraged advisers to argue that their advice falls outside the regulation's purview regardless of its importance.

**Timetable:**

Action	Date	FR Cite
NPRM .....	11/03/23	88 FR 75890
NPRM Comment Period End.	01/02/24	

**Regulatory Flexibility Analysis**

**Required:** Yes.

**Small Entities Affected:** Businesses.

**Government Levels Affected:** Undetermined.

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

**Agency Contact:** Karen E. Lloyd, Office of Regulations and Interpretations, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, FP Building, Room N-5655, Washington, DC 20210, *Phone:* 202 693-8510.

**RIN:** 1210-AC02

**DOL—EBSA**

**168. Mental Health Parity and Addiction Equity Act and the Consolidated Appropriations Act, 2021 [1210-AC11]**

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

**Unfunded Mandates:** This action may affect the private sector under Public Law 104-4.

**Legal Authority:** Pub. L. 116-260, Division BB, Title II; Pub. L. 110-343, secs. 511-512

**CFR Citation:** Not Yet Determined.

**Legal Deadline:** None.

**Abstract:** This rule would finalize proposed amendments to the final rules implementing the Mental Health Parity and Addiction Equity Act (MHPAEA). The amendments clarify plans' and issuers' obligations under the law, promote compliance with MHPAEA, and update requirements to take into account experience with MHPAEA in the years since the rules were finalized. The rule would also finalize new regulations implementing amendments to MHPAEA recently enacted as part of the Consolidated Appropriations Act, 2021 (CAA, 2021).

**Statement of Need:** There have been a number of legislative enactments related to MHPAEA since issuance of the 2014 final rules, including the 21st Century Cures Act, the Support Act, and the CAA, 2021. This rule would propose amendments to the final rules and incorporate examples and modifications to account for this legislation and previously issued guidance and to take into account experience with MHPAEA in the years since the rules were finalized. This rule would also include new regulations implementing the nonquantitative treatment limitation (NQTL) comparative analyses requirements set forth under the CAA, 2021.

**Summary of Legal Basis:** The Department of Labor regulations would be adopted pursuant to the authority contained in 29 U.S.C. 1002, 1135, 1182, 1185d, 1191a, 1191b, and 1191c; Secretary of Labor's Order 1-2011, 77 FR 1088 (Jan. 9, 2012).

**Alternatives:** The Departments considered various approaches related to NQTLs as well as comparative analysis requirements. These alternatives included not expressly incorporating the statutory requirements that NQTLs be no more restrictive for MH/SUD than M/S and requiring plans to include specific data elements in their comparative analysis. These alternatives will be included in the published final rule.

**Anticipated Cost and Benefits:** The Departments anticipate that the MHPAEA final rules would improve the quality of the comparative analyses conducted by plans and issuers, as required by the CAA, 2021, help plans and issuers better understand and fulfill their obligations under MHPAEA, and promote greater transparency regarding discrepancies between mental health and substance use disorder benefits and medical/surgical benefits. The Departments believe that the amendments could cause plans and issuers to revise their policies and remove limitations on treatments for

mental health and substance use disorders. This will provide improved access for participants and beneficiaries seeking MH/SUD treatments which will result in better health outcomes. These expanded protections and clarifications will greatly benefit plans, participants and beneficiaries and more than justify the costs. The costs of the proposed rule include costs to the plans and issuers associated with expanded coverage and utilization, collecting, analyzing and documenting data under the revised NQTL comparative analyses requirements.

**Risks:** Risks and areas of uncertainty regarding potential impacts will be included in the final rule.

**Timetable:**

Action	Date	FR Cite
NPRM .....	08/03/23	88 FR 51552
NPRM Comment Period Extended.	09/28/23	88 FR 66728
NPRM Comment Period Extended End.	10/17/23	
NPRM Analyze Comments.	11/00/23	

**Regulatory Flexibility Analysis**

**Required:** Undetermined.

**Government Levels Affected:** Federal, State.

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

**Agency Contact:** Amber Rivers, Director, Office of Health Plan Standards and Compliance Assistance, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Washington, DC 20210, *Phone:* 202 693-8335, *Email:* rivers.amber@dol.gov.

**RIN:** 1210-AC11

**DOL—EBSA**

**169. Definition of 'Employer' Under Section 3(5) of ERISA-Association Health Plans [1210-AC16]**

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

**Unfunded Mandates:** Undetermined.

**Legal Authority:** 29 U.S.C. 1002; 29 U.S.C. 1135

**CFR Citation:** 29 CFR 2510.3-3, -5.

**Legal Deadline:** None.

**Abstract:** In this rulemaking, the Department of Labor's Employee Benefits Security Administration (EBSA) will explore whether to withdraw, or withdraw and replace, its regulation at 29 CFR 2510.3-5, published as a final rule in 2018, which

established an alternative set of criteria for determining when an employer association may act indirectly in the interest of an employer under section 3(5) of the Employee Retirement Income Security Act (ERISA) for purposes of establishing a multiple employer group health plan. The United States District Court for the District of Columbia vacated portions of the final rule in a 2019 decision in *New York v. United States Department of Labor*, 363 F. Supp. 3d 109 (D.D.C. 2019). EBSA will reevaluate the criteria for a group or association of employers to be able to sponsor a multiple employer group health plan.

*Statement of Need:* To be determined.  
*Summary of Legal Basis:* To be determined.  
*Alternatives:* To be determined.  
*Anticipated Cost and Benefits:* To be determined.  
*Risks:* To be determined.  
*Timetable:*

Action	Date	FR Cite
NPRM .....	11/00/23	
Final Rule .....	04/00/24	

*Regulatory Flexibility Analysis Required:* Undetermined.  
*Government Levels Affected:* Undetermined.  
*Federalism:* Undetermined.  
*Agency Contact:* Jeffrey J. Turner, Deputy Director, Office of Regulations and Interpretations, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, FP Building, Room N–5655, Washington, DC 20210, *Phone:* 202 693–8500.  
*RIN:* 1210–AC16

DOL—EBSA

Final Rule Stage

170. Coverage of Certain Preventive Services Under the Affordable Care Act [1210–AC13]

*Priority:* Other Significant. Major status under 5 U.S.C. 801 is undetermined.  
*Legal Authority:* Pub. L. 111–148, sec. 1001  
*CFR Citation:* Not Yet Determined.  
*Legal Deadline:* None.  
*Abstract:* This rule would finalize proposed amendments to the final rules regarding religious and moral exemptions and accommodations regarding coverage of certain preventive services under Title I of the Patient Protection and Affordable Care Act.  
*Statement of Need:* Previous rules, regulations, and court decisions have

left many women without contraceptive coverage and access to contraceptive services without cost sharing. These rules would seek to resolve the long-running litigation with respect to religious objections to providing contraceptive coverage by honoring the objecting entities’ religious objections while also ensuring that women enrolled in a group health plan established or maintained, or in health insurance covered offered or arranged, by an objecting entity have the opportunity to obtain contraceptive services at no cost. These rules would also eliminate the exemption for entities and individuals that object to contraceptive coverage based on non-religious moral beliefs, which prevents access to contraceptive services without cost sharing.  
*Summary of Legal Basis:* The Department of Labor regulations would be adopted pursuant to the authority contained in 29 U.S.C. 1002, 1135, 1182, 1185d, 1191a, 1191b, and 1191c; Secretary of Labor’s Order 1–2011, 77 FR 1088 (Jan. 9, 2012).  
*Alternatives:* In developing this rule, the Departments considered various alternative approaches. The Departments considered maintaining the exemption (along with the existing accommodations and the proposed individual contraceptive arrangement) with respect to group health plans, health insurance issuers, and institutions of higher education that have a non-religious, moral objection to contraceptive coverage. With respect to individuals enrolled in coverage through entities that have a religious objection to contraceptive coverage, the Departments considered an approach under which contraceptive coverage would be available through separate individual insurance policies that cover only contraceptives and in which participants, beneficiaries, and enrollees would have to separately enroll if they desired contraceptive coverage. The Departments also considered an approach under which, if an objecting entity contracts for a health plan without contraceptive coverage, the contraceptive coverage requirement would apply directly to the issuer in the case of a fully insured plan, or the third party administrator in the case of a self-insured plan. The issuer or third party administrator would then be required to fulfill its separate and independent obligation to provide contraceptive coverage.  
*Anticipated Cost and Benefits:* This rule is expected to increase access to contraceptive services without cost sharing through the individual contraceptive arrangement for eligible

individuals and the elimination of the exemption for entities and individuals that object to contraceptive coverage based on non-religious moral beliefs. This rule would increase health equity given the disproportionate burden of out-of-pocket spending on contraceptive services currently faced by low-income individuals (as those individuals with lower incomes must spend a greater percentage of their incomes on contraceptive services). This rule would also lead to better health outcomes for eligible individuals by increasing access to contraceptive services and reducing unintended pregnancies. Participating providers of contraceptive services (including clinicians, facilities, and pharmacies) and issuers would incur costs associated with entering into signed agreements for reimbursement of costs associated with the provision of contraceptive services to eligible individuals, including costs of verifying consumer eligibility and other associated administrative costs. Eligible individuals would incur costs associated with participating in the individual contraception arrangement, including confirming eligibility to their provider of contraceptive services. HHS estimates the total cost to providers of contraceptive services, issuers, and eligible individuals to be approximately \$30.2 million annually. The rule would also lead to a reduction in health care costs for individuals, issuers, group health plan sponsors, and states due to reductions in unintended pregnancies.  
*Risks:* Departments do not have information on the number of entities and individuals that have claimed a moral exemption to providing contraceptive coverage and are therefore uncertain of the amount of the potential transfer from plans and issuers to participants, beneficiaries, and enrollees due to reduced out-of-pocket spending on contraceptive services associated with the proposed elimination of the exemption for entities and individuals that object to contraceptive coverage based on nonreligious moral beliefs. The Departments estimate that the provision of the individual contraceptive arrangement could lead to a transfer from the Federal Government to individuals (via issuers to providers of contraceptive services) of approximately \$49.9 million annually. This estimate is uncertain due to the limited information available in the 2019 user fee adjustment data. The Departments are uncertain as to how the number of participating providers might vary (for example, across rural and urban areas) and how this variation might affect access to services under the individual

contraceptive arrangement. Due to the lack of data, the Departments are unable to develop a precise estimate of the number of eligible individuals who might participate in the individual contraceptive arrangement. This overall lack of data leads to uncertainty regarding the magnitudes of the total cost savings to eligible individuals and any resulting potential cost savings to states (associated with reduced spending on State-funded programs that provide contraceptive services or a potential reduction in the number of unintended pregnancies that would otherwise impose costs to states).

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/02/23	88 FR 7236
NPRM Comment Period End.	04/03/23	
Final Rule .....	08/00/24	

*Regulatory Flexibility Analysis*

*Required:* Undetermined.

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

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

*Agency Contact:* Amber Rivers, Director, Office of Health Plan Standards and Compliance Assistance, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Washington, DC 20210, *Phone:* 202 693–8335, *Email:* rivers.amber@dol.gov.

*RIN:* 1210–AC13

## DOL—MINE SAFETY AND HEALTH ADMINISTRATION (MSHA)

Final Rule Stage

### 171. Respirable Crystalline Silica [1219–AB36]

*Priority:* Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

*Legal Authority:* 30 U.S.C. 811; 30 U.S.C. 813(h); 30 U.S.C. 957

*CFR Citation:* 30 CFR 56; 30 CFR 57; 30 CFR 60; 30 CFR 70; 30 CFR 71; 30 CFR 72; 30 CFR 75; 30 CFR 90.

*Legal Deadline:* None.

*Abstract:* Many miners are exposed to respirable crystalline silica (RCS) in respirable dust. These miners can develop lung diseases such as chronic obstructive pulmonary disease, and various forms of pneumoconiosis, such as silicosis, progressive massive fibrosis, and rapidly progressive pneumoconiosis.

These diseases are irreversible and may ultimately be fatal. MSHA's

existing standards limit miners' exposures to RCS. MSHA will publish a final rule to address the existing permissible exposure limit of RCS for all miners and to update the existing respiratory protection standards under 30 CFR 56, 57, and 72.

*Statement of Need:* Many miners are exposed to respirable crystalline silica (RCS) in respirable dust, which can result in the onset of diseases such as silicosis and rapidly progressive pneumoconiosis. These lung diseases are irreversible and may ultimately be fatal. MSHA is examining the existing limit on miners' exposures to RCS to safeguard the health of America's miners. Based on MSHA's experience with existing standards and regulations, as well as OSHA's RCS standards and NIOSH research, MSHA will develop a rule applicable to metal, nonmetal, and coal operations.

*Summary of Legal Basis:* Sections 101(a), 103(h), and 508 of the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended (30 U.S.C. 811(a), 813(h), and 957).

*Alternatives:* MSHA will examine one or two different levels of miners' RCS exposure limit and assess the technological and economic feasibility of such option(s).

*Anticipated Cost and Benefits:* To be determined.

*Risks:* Miners face impairment risk of health and functional capacity due to RCS exposures. MSHA will examine the existing RCS standard and determine ways to reduce the health risks 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 .....	07/13/23	88 FR 44852
NPRM Comment Period Extended.	08/14/23	88 FR 54961
NPRM Comment Period Extended End.	09/11/23	
NPRM Notice of Public Hearings.	07/26/23	88 FR 48146
NPRM Public Hearing in Arlington Virginia.	08/03/23	
NPRM Public Hearing in Beckley, West Virginia.	08/10/23	
NPRM Public Hearing in Denver, Colorado.	08/21/23	
Final Rule .....	04/00/24	

*Regulatory Flexibility Analysis Required:* Undetermined.

*Small Entities Affected:* Businesses, Governmental Jurisdictions.

*Government Levels Affected:* Local, State.

*Agency Contact:* S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 201 12th Street S, Suite 401, Arlington, VA 22202, *Phone:* 202 693–9440, *Fax:* 202 693–9441.

*RIN:* 1219–AB36

## DOL—MSHA

### 172. Safety Program for Surface Mobile Equipment [1219–AB91]

*Priority:* Other Significant.

*Legal Authority:* 30 U.S.C. 811; 30 U.S.C. 813(h); 30 U.S.C. 957

*CFR Citation:* 30 CFR 56; 30 CFR 57; 30 CFR 77.

*Legal Deadline:* None.

*Abstract:* MSHA would require mine operators to establish a written safety program for mobile equipment and powered haulage equipment (except belt conveyors) used at surface mines and surface areas of underground mines. Under this proposal, mine operators would be required to assess hazards and risks and identify actions to reduce accidents related to surface mobile equipment. The operators would have flexibility to develop and implement a safety program that would work best for their mining conditions and operations. This proposed rule would reduce fatal and nonfatal injuries involving surface mobile equipment used at mines and improve miner safety and health.

*Statement of Need:* Although mine accidents are declining, accidents involving mobile and powered haulage equipment are still a leading cause of fatalities in mining. To reduce fatal and nonfatal injuries involving surface mobile equipment used at mines, MSHA is proposing a regulation that would require mine operators employing six or more miners to develop a written safety program for mobile and powered haulage equipment (excluding belt conveyors) at surface mines and surface areas of underground mines. The written safety program would include actions mine operators would take to identify hazards and risks to reduce accidents, injuries, and fatalities related to surface mobile equipment.

*Summary of Legal Basis:* Sections 101(a), 103(h), and 508 of the Federal Mine Safety and Health Act of 1977 (Mine Act), as amended (30 U.S.C. 811(a), 813(h), and 957).

*Alternatives:* MSHA considered requiring all mines, regardless of size, to

develop and implement a written safety program for surface mobile equipment. Based on the Agency's experience, MSHA concluded that a mine operator with five or fewer miners would generally have a limited inventory of surface mobile equipment. These operators would also have less complex mining operations, with fewer mobile equipment hazards that would necessitate a written safety program. Thus, these mine operators are not required to have a written safety program, although MSHA would encourage operators with five or fewer miners to have safety programs. MSHA will consider comments and suggestions received on alternatives or best practices that all mines might use to develop safety programs (whether written or not) for surface mobile equipment.

**Anticipated Cost and Benefits:** The proposed rule would not be economically significant, and it would have some net benefits.

**Risks:** Miners operating mobile and powered haulage equipment or working nearby face risks of workplace injuries, illnesses, or deaths. The proposed rule would allow a flexible approach to reducing hazards and risks specific to each mine so that mine operators would be able to develop and implement safety programs that work for their operation, mining conditions, and miners.

**Timetable:**

Action	Date	FR Cite
Request for Information (RFI).	06/26/18	83 FR 29716
Notice of Public Stakeholder Meetings.	07/25/18	83 FR 35157
Stakeholder Meeting—Birmingham, AL.	08/07/18	
Stakeholder Meeting—Dallas, TX.	08/09/18	
Stakeholder Meeting (Webinar)—Arlington, VA.	08/16/18	
Stakeholder Meeting—Reno, NV.	08/21/18	
Stakeholder Meeting—Beckley, WV.	09/11/18	
Stakeholder Meeting—Albany, NY.	09/20/18	
Stakeholder Meeting—Arlington, VA.	09/25/18	
RFI Comment Period End.	12/24/18	
NPRM .....	09/09/21	86 FR 50496
NPRM Comment Period End.	11/08/21	

Action	Date	FR Cite
NPRM Reopening of the Rule-making Record for.	12/20/21	86 FR 71860
Public Comments Virtual Public Hearing.	01/11/22	
NPRM Comment Period Re-opened End.	02/11/22	
Final Rule .....	11/00/23	

**Regulatory Flexibility Analysis Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** None.

**Agency Contact:** S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, Department of Labor, Mine Safety and Health Administration, 201 12th Street S, Suite 401, Arlington, VA 22202, Phone: 202 693-9440, Fax: 202 693-9441.

**RIN:** 1219-AB91

## DOL—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

Prerule Stage

### 173. Heat Illness Prevention in Outdoor and Indoor Work Settings [1218-AD39]

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

**Legal Authority:** Not Yet Determined

**CFR Citation:** None.

**Legal Deadline:** None.

**Abstract:** Heat is the leading weather-related killer. Excessive heat can cause heat stroke and even death if not treated properly. It also exacerbates existing health problems like asthma, kidney failure, and heart disease. Workers in agriculture and construction are at highest risk, but the problem affects all workers exposed to heat, including indoor workers without climate-controlled environments. Essential jobs where employees are exposed to high levels of heat are disproportionately held by Black and Brown workers.

Heat stress killed 815 U.S. workers and seriously injured more than 70,000 workers from 1992 through 2017, according to the Bureau of Labor Statistics. However, this is likely a vast underestimate, given that injuries and illnesses are under reported in the U.S., especially in the sectors employing vulnerable and often undocumented workers. Further, heat is not always recognized as a cause of heat-induced injuries or deaths and can easily be misclassified, because many of the symptoms overlap with other more common diagnoses.

To date, California, Oregon, Washington, Minnesota, and the US military have issued heat protections. OSHA currently relies on the general duty clause (OSH Act section 5(a)(1)) to protect workers from this hazard. Notably, from 2013 through 2017, California used its heat standard to conduct 50 times more inspections resulting in a heat-related violation than OSHA did nationwide under its general duty clause. It is likely to become even more difficult to protect workers from heat stress under the general duty clause in light of the 2019 Occupational Safety and Health Review Commission's decision in *Secretary of Labor v. A.H. Sturgill Roofing, Inc.*

OSHA was petitioned by Public Citizen for a heat stress standard in 2011. The Agency denied this petition in 2012, but was once again petitioned by Public Citizen, on behalf of approximately 130 organizations, for a heat stress standard in 2018 and 2019. In 2019 and 2021, some members of the Senate also urged OSHA to initiate rulemaking to address heat stress.

Given the potentially broad scope of regulatory efforts to protect workers from heat hazards, as well as a number of technical issues and considerations with regulating this hazard (e.g., heat stress thresholds, heat acclimatization planning, exposure monitoring, medical monitoring), OSHA published an ANPRM on Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings (October 27, 2021) to begin a dialogue and engage with stakeholders to explore the potential for rulemaking on this topic. For additional information, please see the Department's fall regulatory plan narrative statement.

**Statement of Need:** Heat stress killed more than 900 US workers, and caused serious heat illness in almost 100 times as many, from 1992 through 2017, according to the Bureau of Labor Statistics. However, this is likely a vast underestimate, given that injuries and illnesses are underreported in the US, especially in the sectors employing vulnerable and often undocumented workers. Further, heat is not always recognized as a cause of heat-induced illnesses or deaths, which are often misclassified, because many of the symptoms overlap with other more common diagnoses.

**Summary of Legal Basis:** The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 U.S.C. 651).

*Alternatives:* One alternative to proposed rulemaking would be to take no regulatory action and instead rely upon the General Duty Clause (OSH Act Section 5(a)(1) for select enforcement activity). As OSHA develops more information, it will also make decisions relating to the scope of the standard and the requirements it may impose.

*Anticipated Cost and Benefits:* The estimates of costs and benefits are still under development.

*Risks:* Analysis of risks is still under development.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	10/27/21	86 FR 59309
ANPRM Comment Period Extended.	12/02/21	86 FR 68594
ANPRM Comment Period Extended End.	01/26/22	
Initiate SBREFA ..	06/02/23	
Complete SBREFA.	11/00/23	
Analyze SBREFA Report.	01/00/24	

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Undetermined.

*Agency Contact:* Andrew Levinson, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, FP Building, Room N-3718, Washington, DC 20210, *Phone:* 202 693-1950, *Email:* levinson.andrew@dol.gov.

*RIN:* 1218-AD39

## DOL—OSHA

Proposed Rule Stage

### 174. Infectious Diseases [1218-AC46]

*Priority:* Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 5 U.S.C. 533; 29 U.S.C. 657 and 658; 29 U.S.C. 660; 29 U.S.C. 666; 29 U.S.C. 669; 29 U.S.C. 673  
*CFR Citation:* 29 CFR 1910.

*Legal Deadline:* None.

*Abstract:* Employees in health care and other high-risk environments face long-standing infectious disease hazards such as tuberculosis (TB), varicella disease (chickenpox, shingles), and measles, as well as new and emerging infectious disease threats, such as Severe Acute Respiratory Syndrome (SARS), the 2019 Novel Coronavirus

(COVID-19), and pandemic influenza. Health care workers and workers in related occupations, or who are exposed in other high-risk environments, are at increased risk of contracting TB, SARS, Methicillin-Resistant Staphylococcus Aureus (MRSA), COVID-19, and other infectious diseases that can be transmitted through a variety of exposure routes. OSHA is examining regulatory alternatives for control measures to protect employees from infectious disease exposures to pathogens that can cause significant disease. Workplaces where such control measures might be necessary include: health care, emergency response, correctional facilities, homeless shelters, drug treatment programs, and other occupational settings where employees can be at increased risk of exposure to potentially infectious people. A standard could also apply to laboratories, which handle materials that may be a source of pathogens, and to pathologists, coroners' offices, medical examiners, and mortuaries.

*Statement of Need:* Employees in health care and other high-risk environments face long-standing infectious disease hazards such as tuberculosis (TB), varicella disease (chickenpox, shingles), and measles, as well as new and emerging infectious disease threats, such as Severe Acute Respiratory Syndrome (SARS), the 2019 Novel Coronavirus (COVID-19), and pandemic influenza. Health care workers and workers in related occupations, or who are exposed in other high-risk environments, are at increased risk of contracting TB, SARS, Methicillin-Resistant Staphylococcus Aureus (MRSA), COVID-19, and other infectious diseases that can be transmitted through a variety of exposure routes.

*Summary of Legal Basis:* The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and healthful working conditions for working men and women (29 U.S.C. 651).

*Alternatives:* One alternative is to take no regulatory action. OSHA is examining regulatory alternatives for control measures to protect employees from infectious disease exposures to pathogens that can cause significant disease. In addition to health care, workplaces where SERs suggested such control measures might be necessary include: emergency response, correctional facilities, homeless shelters, drug treatment programs, and other occupational settings where employees

can be at increased risk of exposure to potentially infectious people.

A standard could also apply to laboratories, which handle materials that may be a source of pathogens, and to pathologists, coroners' offices, medical examiners, and mortuaries. OSHA offered several alternatives to the SBREFA panel when presenting the proposed Infectious Disease (ID) rule. OSHA considered a specification oriented rule rather than a performance oriented rule, but has preliminarily determined that this type of rule would provide less flexibility and would likely fail to anticipate all of the potential hazards and necessary controls for every type and every size of facility and would under-protect workers. OSHA also considered changing the scope of the rule by restricting the ID rule to workers who have occupational exposure during the provision of direct patient care in institutional settings but based on the evidence thus far analyzed, workers performing other covered tasks in both institutional and non-institutional settings also face a risk of infection because of their occupational exposure.

*Anticipated Cost and Benefits:* The estimates of costs and benefits are still under development.

*Risks:* Analysis of risks is still under development.

*Timetable:*

Action	Date	FR Cite
Request for Information (RFI).	05/06/10	75 FR 24835
RFI Comment Period End.	08/04/10	
Analyze Comments.	12/30/10	
Stakeholder Meetings.	07/05/11	76 FR 39041
Initiate SBREFA ..	06/04/14	
Complete SBREFA.	12/22/14	
NPRM .....	06/00/24	

*Regulatory Flexibility Analysis Required:* Yes.

*Small Entities Affected:* Businesses, Governmental Jurisdictions.

*Government Levels Affected:* Local, State.

*Federalism:* Undetermined.

*Agency Contact:* Andrew Levinson, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, FP Building, Room N-3718, Washington, DC 20210, *Phone:* 202 693-1950, *Email:* levinson.andrew@dol.gov.

*RIN:* 1218-AC46

DOL—OSHA

175. Emergency Response [1218–AC91]

*Priority:* Section 3(f)(1) Significant.  
*Major under 5 U.S.C. 801.*  
*Unfunded Mandates:* Undetermined.  
*Legal Authority:* 29 U.S.C. 655(b); 29 U.S.C. 657; 5 U.S.C. 609  
*CFR Citation:* 29 CFR 1910.  
*Legal Deadline:* None.

*Abstract:* OSHA currently regulates aspects of emergency response and preparedness; some of these standards were promulgated decades ago, and none were designed as comprehensive emergency response standards. Consequently, they do not address the full range of hazards or concerns currently facing emergency responders, and other workers providing skilled support, nor do they reflect major changes in performance specifications for protective clothing and equipment. The agency acknowledges that current OSHA standards also do not reflect all the major developments in safety and health practices that have already been accepted by the emergency response community and incorporated into industry consensus standards. OSHA is considering updating these standards with information gathered through an RFI and public meetings.

*Statement of Need:* Emergency response is a dangerous activity with more than 100 responders killed, and hundreds of thousands injured each year. OSHA currently regulates aspects of emergency response and preparedness; some of these standards were promulgated decades ago, and none were designed as comprehensive emergency response standards. Consequently, they do not address the full range of hazards or concerns currently facing emergency responders, nor do they reflect major changes in performance specifications for protective clothing and equipment. The agency acknowledges that current OSHA standards also do not reflect all the major developments in safety and health practices that have already been accepted by the emergency response community and incorporated into industry consensus standards. OSHA is developing a proposed rule that updates, by replacing, the existing outdated fire brigade standard to reflect current consensus standards and industry best practices. The agency anticipates that compliance with the updated rule would significantly reduce injuries and fatalities.

*Summary of Legal Basis:* The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to set mandatory occupational safety and health standards to assure safe and

healthful working conditions for working men and women (29 U.S.C. 651).  
*Alternatives:* One alternative to proposed rulemaking would be to take no regulatory action. As a program standard that is primarily performance based, alternatives would depend on each employer’s individual situation. There are no alternatives proposed in the NPRM under development. OSHA intends to seek stakeholder input for alternatives that could reduce the burden on small entities, and on entities with volunteer emergency responders who are treated as employees in some states with OSHA approved state OSH programs and would be impacted by a proposed rule.  
*Anticipated Cost and Benefits:* The estimates of costs and benefits are still under development.  
*Risks:* Analysis of risks is still under development.  
*Timetable:*

Action	Date	FR Cite
Stakeholder Meetings.	07/30/14	
Convene NACOSH Workgroup.	09/09/15	
NACOSH Review of Workgroup Report.	12/14/16	
Initiate SBREFA ..	08/02/21	
Finalize SBREFA	12/02/21	
NPRM .....	11/00/23	

*Regulatory Flexibility Analysis Required:* Yes.  
*Small Entities Affected:* Governmental Jurisdictions.  
*Government Levels Affected:* Local, State.  
*Federalism:* Undetermined.  
*Agency Contact:* Andrew Levinson, Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, FP Building, Room N–3718, Washington, DC 20210, *Phone:* 202 693–1950, *Email:* levinson.andrew@dol.gov.  
*RIN:* 1218–AC91

BILLING CODE 4510–HL–P

DEPARTMENT OF TRANSPORTATION (DOT)

Introduction: Departmental Mission

The U.S. Department of Transportation (Department or DOT) has a mission to deliver the world’s leading transportation system, serving the American people and economy through

the safe, efficient, sustainable, and equitable movement of people and goods.  
**The Department’s Regulatory Philosophy, Initiatives, and Priorities**  
DOT issues regulations to make America’s transportation the safest in the world for the benefit of all who use it, grow an inclusive and sustainable economy, reduce inequities across our transportation systems and the communities they affect, and help tackle the climate crisis. To accomplish this goal, DOT regulates safety in the aviation, motor carrier, railroad, motor vehicle, commercial space, transit, and pipeline transportation areas. The Department also regulates aviation consumer and economic issues and provides financial assistance and writes the necessary implementing rules for programs involving highways, airports, mass transit, the maritime industry, railroads, motor transportation and vehicle safety. DOT also has responsibility for developing policies that implement a wide range of regulations that govern Departmental programs such as acquisition and grants management, access for people with disabilities, environmental protection, energy conservation, information technology, occupational safety and health, property asset management, seismic safety, security, emergency response, and the use of aircraft and vehicles. In addition, DOT writes regulations to carry out a variety of statutes ranging from the Air Carrier Access Act and the Americans with Disabilities Act to Title VI of the Civil Rights Act.  
Safety is our North Star. The DOT Regulatory Plan reflects our commitment through a balanced regulatory approach grounded in reducing transportation-related fatalities and injuries. Our goals are to manage safety risks, reverse recent trends negatively affecting safety, and build on the successes that have already been achieved to make our transportation system safer than it has ever been. The regulatory plan laid out below also reflects a careful balance that emphasizes the Department’s priorities in responding to the urgent challenges facing our nation.  
The safe and efficient movement of goods and passengers requires us not just to maintain, but to improve our national transportation infrastructure. Accordingly, our Regulatory Plan incorporates regulatory actions that increase competition and consumer protection, as well as enable the next generation of automation technology for commercial motor vehicles.

Climate change is one of the most urgent challenges facing our Nation. As discussed in the next section, the Department has engaged in significant regulatory activities to address this challenge.

Ensuring that the transportation system equitably benefits underserved communities is a top priority. This work is guided by the Departmental and interagency work being done pursuant to Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. As discussed in the next section, the Department is working on multiple regulatory changes to ensure access to transportation for people with disabilities.

When developing regulations and establishing our regulatory priorities, the Department fosters active participation and engagement from members of the public and affected communities. In our Regulatory Plan, we detail engagement efforts that have helped to inform our priorities to date, as well as future engagement tools we plan to use. The Department is ensuring that we hear from members of the public who have not typically participated in the regulatory process. To that end, in April 2022, the Department issued new *ex parte* guidance that encourages DOT personnel to have meetings or other contacts with outside parties during rulemaking and states that DOT personnel “should ensure, through appropriate affirmative outreach where necessary, that the opportunity to engage in *ex parte* communications is equitable to all parties, including stakeholders who might otherwise be less represented in that process.”<sup>1</sup>

The Department carries out its responsibilities through the Office of the Secretary (OST) and the following operating administrations (OAs): Federal Aviation Administration (FAA); Federal Highway Administration (FHWA); Federal Motor Carrier Safety Administration (FMCSA); Federal Railroad Administration (FRA); Federal Transit Administration (FTA); Maritime Administration (MARAD); National Highway Traffic Safety Administration (NHTSA); Pipeline and Hazardous

Materials Safety Administration (PHMSA); and Great Lakes St. Lawrence Seaway Development Corporation (GLS). Since each OA has its own area of focus, we summarize the regulatory priorities of each below. More information about each of the rules discussed below can be found in the DOT Unified Agenda.

#### Office of the Secretary of Transportation

OST oversees the regulatory processes for the Department. OST implements the Department’s regulatory policies and procedures and is responsible for ensuring the involvement of senior officials in regulatory decision making. Through the Office of the General Counsel (OGC), OST is also responsible for ensuring that the Department complies with the Administrative Procedure Act, Executive Orders 12866, 13563 and 14094, DOT’s Regulatory Policies and Procedures, and other legal and policy requirements affecting the Department’s rulemaking activities. In addition, OST has the lead role in matters concerning aviation consumer and economic rules, Title VI of the Civil Rights Act, the Americans with Disabilities Act, and rules that affect multiple elements of the Department.

OST provides guidance and training regarding compliance with regulatory requirements and processes for personnel throughout the Department. OST also plays an instrumental role in the Department’s efforts to improve our economic analyses; risk assessments; regulatory flexibility analyses; other related analyses; retrospective reviews of rules; and data quality, including peer reviews. OGC is the lead office that works with the Office of Management and Budget’s (OMB) Office of Information and Regulatory Affairs (OIRA) to comply with Executive Order 12866 for significant rules, coordinates the Department’s response to OMB’s intergovernmental review of other agencies’ significant rulemaking documents, and other relevant Administration rulemaking directives. OGC also works closely with representatives of other agencies, the White House, and congressional staff to provide information on how various proposals would affect the ability of the Department to perform its safety, infrastructure, and other missions.

The Department has recently completed a rulemaking to ensure that people with disabilities will be able to access lavatories on single-aisle aircraft. This rule was heavily informed by feedback from persons with disabilities, as it was developed as part of a negotiated rulemaking. Stakeholders,

including numerous disability advocacy organizations, directly developed the features of the rule, which DOT then implemented through a recently issued final rule. DOT also reached out to the U.S. Access Board to develop new safety and accessibility standards for on-board wheelchairs. The Department held a joint public meeting with the Access Board to solicit further comment on the provisions of the rule relating to on-board wheelchairs.

In addition, the Department is working on: (1) a rulemaking to enhance the safety of air travel for individuals with disabilities who use wheelchairs; and (2) a rulemaking to ensure that disabled persons have equitable access to transit facilities. In the rulemaking to enhance air travel safety for wheelchair users, the Department is considering, among other things, options to ensure that assistance provided to individuals with disabilities be provided in a safe manner and that disabled individuals’ assistive devices not be mishandled.

Executive Order 14036 directs the Department to take actions that would promote competition and deliver benefits to America’s consumers, including initiating a rulemaking to ensure that air consumers have ancillary fee information, including “baggage fees,” “change fees,” “cancellation fees,” and fees for seating adjacent to young children at the time of ticket purchase. Among a number of steps to further the Administration’s goals in this area, the Department has initiated a rulemaking to enhance consumers’ ability to determine the true cost of travel, titled “Enhancing Transparency of Airline Ancillary Service Fees.” This rulemaking is informed by feedback received at three different public meetings: two meetings of the Aviation Consumer Protection Advisory Committee on December 8, 2022, and January 12, 2023, and one public hearing on March 30, 2023. All meetings were open to the public, and attendees had the option to provide live input at the December 8 and March 30 meetings. The docket for this rule was also open to public comment submission for approximately 120 days.

To further enhance consumer protection, the Department is also working on a rulemaking that would clarify, under the Department’s rules requiring airlines to provide prompt refunds, when carriers and ticket agents must provide prompt ticket refunds to passengers when a carrier cancels or makes a significant change to a flight. This rulemaking would also require airlines to refund checked baggage fees when they fail to deliver the bags in a timely manner. This rulemaking is

<sup>1</sup> Guidance on Communication with Parties outside of the Federal Executive Branch (Ex Parte Communications) at 5, available at: <https://www.transportation.gov/sites/dot.gov/files/2022-04/Guidance-on-Communication-with-Parties-outside-of-the-Federal-Executive-Branch-%28Ex-Parte-Communications%29.pdf>. See also OIRA Memorandum on Broadening Public Participation and Community Engagement in the Regulatory Process, available at: <https://www.whitehouse.gov/wp-content/uploads/2023/07/Broadening-Public-Participation-and-Community-Engagement-in-the-Regulatory-Process.pdf>.



informed by feedback received at four public meetings: three meetings of the Aviation Consumer Protection Advisory Committee on August 22, 2022, December 8, 2022, and January 12, 2023, and one public hearing on March 21, 2023. The docket for this rule was also open to public comment submission for approximately 130 days.

#### **Federal Aviation Administration**

FAA is charged with safely and efficiently operating and maintaining the most complex aviation system in the world. To enhance aviation safety, FAA is working on a rulemaking that would require a safety management system for certain aircraft, engine, and propeller manufacturers; certificate holders conducting common carriage operations; and persons conducting certain, specific types of air tour operations. This rulemaking is informed by feedback that FAA received from an Aviation Rulemaking Committee comprised of members from across the aviation industry. In addition, FAA will proceed with a rulemaking to enable powered lift operations and to further advance the integration of unmanned aircraft systems into the national airspace system.

#### **Federal Highway Administration**

FHWA carries out the Federal highway program in partnership with State and local agencies to meet the Nation's transportation needs. FHWA's mission is to improve the quality and performance of our Nation's highway system and its intermodal connectors.

Consistent with this mission, FHWA has finalized its National Electric Vehicle Infrastructure (NEVI) Formula Program regulation as required by the Bipartisan Infrastructure Law (enacted as the Infrastructure Investment and Jobs Act) (Pub. L. 117–58) (Nov. 15, 2021). This regulation will enable States to implement federally-funded charging station projects in a standardized fashion across a national Electric Vehicle (EV) charging network that can be utilized by all EVs regardless of vehicle brand. Such standards will provide consumers with reliable expectations for travel in an EV across and throughout the United States and support a national workforce skilled and trained in EV supply equipment installation and maintenance. This rule was informed by feedback provided through two webinars hosted by FHWA that were advertised, in part, to communities interested in alternative fuels and sustainable transportation. FHWA is also working on a rulemaking that would establish a method for the measurement and reporting of

greenhouse gas emissions associated with transportation. In addition, FHWA is working on a Buy America rulemaking to encourage the use of American-manufactured products.

#### **Federal Motor Carrier Safety Administration**

The mission of FMCSA is to reduce crashes, injuries, and fatalities involving commercial trucks and buses. FMCSA regulations establish minimum safety standards for motor carriers, commercial drivers, commercial motor vehicles, and State agencies receiving certain motor carrier safety grants and issuing commercial drivers' licenses.

FMCSA will continue to coordinate efforts on the development of autonomous vehicle technologies and is currently working on a rulemaking to revise existing regulations to identify changes that might be needed to ensure that DOT regulations ensure safety and keep pace with innovations. This rulemaking is informed by feedback that FMCSA received at two separate listening sessions held with stakeholders and members of the public.

Additionally, in support of the NHTSA automatic emergency braking (AEB) rulemaking for heavy trucks, FMCSA will seek information and comment concerning the maintenance and operation of AEB by motor carriers. FMCSA has also been engaged in activities to advance the voluntary adoption of AEB for heavy vehicles, primarily through the Tech-Celerate Now (TCN) program. This program focuses on accelerating the adoption of Advanced Driver Assistance Systems (ADAS), such as AEB, by the trucking industry to reduce fatalities and prevent injuries and crashes, in addition to realizing substantial return-on-investment through reducing costs associated with such crashes for the motor carrier. Initiated in September 2019 and completed in February 2022, the first phase of this program encompassed research into ADAS technology adoption barriers; a national outreach, educational, and awareness campaign; and data collection and analysis. Outreach accomplishments included development of training materials for fleets, drivers, and maintenance personnel related to AEB technology and return-on-investment (ROI) guides; educational videos on ADAS braking, steering, warning, and monitoring technologies; a web-based TCN ADAS-specific ROI calculator; four articles on ADAS technologies; and a program website to host the training materials. Planning is underway for the second phase of the TCN program, which includes an expanded national

outreach and education campaign, additional research into the barriers to ADAS adoption by motor carriers, and evaluation of the outreach campaign. FMCSA is also working on a rulemaking that would set a maximum speed for certain commercial motor vehicles.

#### **National Highway Traffic Safety Administration**

NHTSA pursues policies that enable safety; establish light-, medium-, and heavy-duty vehicle fuel economy and fuel efficiency standards; enhance equity; and improve mobility to save lives, prevent injuries, and reduce economic and social costs due to roadway crashes. The statutory responsibilities of NHTSA relating to motor vehicles include reducing the number, and mitigating the effects, of motor vehicle crashes and related fatalities and injuries; providing safety-relevant information to aid prospective purchasers of vehicles, child restraints, and tires; and improving fuel economy and fuel efficiency standards requirements. NHTSA develops safety standards and other regulations driven by data and research. NHTSA's regulatory priorities focus on issues related to safety, climate, equity, and vulnerable road users.

Relative to climate and equity, NHTSA plans to propose a rulemaking to address the next phase of Fuel Efficiency and Greenhouse Gas Standards for Medium- and Heavy-Duty Engines and Vehicles, pursuant to Executive Order 14037. Also pursuant to Executive Order 14037, NHTSA has proposed the next phase of NHTSA's corporate average fuel economy (CAFE) standards for passenger cars and light trucks. To enhance the safety of vulnerable road users and vehicle occupants, NHTSA has issued a proposal to require automatic emergency braking (AEB) on light vehicles, including Pedestrian AEB. For heavy trucks, NHTSA also proposed a rulemaking, in coordination with FMCSA, to require AEB. NHTSA's rulemakings are informed by the public outreach that it regularly engaged in while a rule is in development, including with Federal partners; State, local, and tribal governments; and a wide range of interested stakeholders—some of whom represent underserved communities.

#### **Federal Railroad Administration**

FRA exercises regulatory authority over all areas of railroad safety and, where feasible, incorporates flexible performance standards. The current FRA regulatory program continues to reflect a number of pending proceedings

to satisfy mandates resulting from the Bipartisan Infrastructure Law (2021). These actions support a safe, high-performing passenger rail network, protect worker safety, and encourage innovation and the adoption of new technology to improve rail safety.

To further enhance safety, FRA is working on a rulemaking that would address the potential safety impact of one-person train operations, including appropriate measures to mitigate an accident's impact and severity. This rulemaking would address the issue of minimum requirements for the size of train crews, depending on the type of operations. To inform this rulemaking, FRA conducted outreach on its proposed rule that resulted in about 99 percent of the written comments submitted to the docket being from individual commenters who were not filing their comment officially on behalf of an organization, group, or business. FRA also held a public hearing that allowed more than 225 people to watch live testimony from labor organization leaders, railroads, and rail associations, in addition to the approximately 60 speakers and other physically present attendees.

#### **Federal Transit Administration**

The mission of FTA is to improve public transportation for America's communities. To further that end, FTA provides financial and technical assistance to local public transit systems, including buses, subways, light rail, commuter rail, trolleys, and ferries, oversees safety measures, and helps develop next-generation technology research. FTA's regulatory activities implement the laws that apply to recipients' uses of Federal funding and the terms and conditions of FTA grant awards.

#### **Maritime Administration**

MARAD administers Federal laws and programs to improve and strengthen the maritime transportation system to meet the economic, environmental, and security needs of the Nation. To that end, MARAD's efforts are focused upon ensuring a strong American presence in the domestic and international trades and to expanding maritime opportunities for American businesses and workers.

MARAD's regulatory objectives and priorities reflect the Agency's responsibility for ensuring the availability of water transportation services for American shippers and consumers and, in times of war or national emergency, for the U.S. armed forces. MARAD will continue its work increasing the efficiency of program

operations by updating and clarifying implementing rules and program administrative procedures.

#### **Pipeline and Hazardous Materials Safety Administration**

PHMSA has responsibility for rulemaking focused on hazardous materials transportation and pipeline safety. In addition, PHMSA administers programs under the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990.

PHMSA will continue working on the Gas Pipeline Leak Detection and Repair rulemaking, which would amend the Pipeline Safety Regulations to enhance requirements for detecting and repairing leaks on new and existing natural gas distribution, gas transmission, and gas gathering pipelines. PHMSA anticipates that the amendments proposed in this rulemaking would reduce methane emissions arising from leaks and incidents from natural gas pipelines and address environmental justice concerns by improving the safety of natural gas pipelines near environmental justice communities and mitigating the risks for those communities arising from climate change. This rulemaking is informed by feedback that PHMSA received at a virtual public meeting. PHMSA staff also attended a Methane Detection Technology Workshop hosted by EPA in August 2021. In addition, in November 2023, PHMSA intends to hold a Gas Pipeline Advisory Committee meeting to discuss the leak detection rulemaking, including the comments received on the NPRM.

#### **DOT—FEDERAL AVIATION ADMINISTRATION (FAA)**

Final Rule Stage

##### **176. Safety Management Systems [2120–AL60]**

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

*Legal Authority:* 49 U.S.C. 106(f); 49 U.S.C. 44701(a)(5)

*CFR Citation:* 14 CFR 135; 14 CFR 21; 14 CFR 91.

*Legal Deadline:* None.

*Abstract:* This rulemaking would apply the requirements of 14 CFR part 5, with appropriate modifications. As a result, this rulemaking would require persons engaged in the design and production of aircraft, engines, or propellers; certificate holders that conduct common carriage operations under part 135; and persons conducting certain, specific types of air tour operations under part 91 to implement a Safety Management System.

*Statement of Need:* Recent incidents and accidents have indicated the need for action to improve safety in the National Airspace System (NAS). In addition, recommendations from the National Transportation Safety Board (NTSB), mandates in the Aircraft Certification Safety and Accountability (ACSA) Act (Pub. L. 116–260, December 27, 2020), agreements in International Civil Aviation Organization (ICAO) Annexes and Standards and Recommended Practices (SARPs), and recommendations from previous Aviation Rulemaking Committees (ARCs) indicate that expanded application of SMS is needed. Further, the successful implementation of Safety Management Systems (SMS) in part 121 suggests the potential benefit to expansion of SMS into other sectors of the aviation system. Therefore, the Federal Aviation Administration has determined that expanding the application of part 5 is necessary.

*Summary of Legal Basis:* The FAA's authority to issue rules on aviation safety is found in title 49 of the United States Code (U.S.C.). Subtitle I, section 106 describes the authority of the FAA Administrator. This rulemaking is promulgated under the authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority. This rulemaking is also promulgated under 49 U.S.C. 44701(a)(5), 49 U.S.C. 44701(d)(1)(A), 49 U.S.C. 44701(a)(2), 49 U.S.C. 44707(2), 49 U.S.C. 44702 and 49 U.S.C. 44704. In addition, the Airport Certification, Safety, and Accountability Act, (the Act), Public Law 116–260, division V, title I, sec. 102 (December 27, 2020) requires the FAA to initiate a rulemaking to require that manufacturers that hold both a type certificate and a production certificate issued pursuant to 49 U.S.C. 44704 have a safety management system consistent with standards and recommended practices established by ICAO. This rulemaking is within the scope of the aforementioned authorities because it requires certain entities to develop and maintain an SMS to improve the safety of their operations. The development and implementation of SMS ensures safety in air transportation, manufacturing, and maintenance by helping certain entities proactively identify and mitigate safety hazards, thereby reducing the possibility or recurrence of accidents in air transportation.

*Alternatives:* The proposed expansion of the applicability of part 5 furthers the

Administrator’s mission of promoting the safe flight of civil aircraft in air commerce and reducing or eliminating the possibility or recurrence of accidents in air transportation. The FAA is currently exploring several alternatives to determine how the revised applicability would extend SMS requirements to parts 21, 91, 135, and 145.

*Summary of Legal Basis:* The FAA is in the process of determining the costs and benefits associated with the proposed rule.

*Risks:* An SMS is a formalized approach to managing safety by developing an organization-wide safety policy, developing formal methods of identifying hazards, analyzing and mitigating risk, developing methods for ensuring continuous safety improvement, and creating organization-wide safety promotion strategies. An SMS provides an organization’s management with a set of decision-making tools that can be used to plan, organize, direct, and control its business activities in a manner that enhances safety and ensures compliance with regulatory standards. Adherence to standard operating procedures, proactive identification and mitigation of hazards and risks, and effective communications are crucial to continued operational safety. The FAA envisions an SMS would provide those covered by the proposed rule with an added layer of safety to help reduce the number of incidents, and accidents.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/11/23	88 FR 1932
NPRM Comment Period Ex-tended.	01/30/23	88 FR 5812
NPRM Comment Period End.	03/13/23	
Second NPRM Comment Pe-riod End.	04/11/23	
Analyzing Com-ments.	06/30/23	
Final Action .....	07/00/24	

*Regulatory Flexibility Analysis Required:* No.  
*Small Entities Affected:* No.  
*Government Levels Affected:* None.  
*URL For More Information:*  
[www.regulations.gov](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

**BILLING CODE 4910–9X–P**

**DEPARTMENT OF THE TREASURY**  
**Statement of Regulatory Priorities**

The primary mission of the Department of the Treasury is to maintain a strong economy and create economic and job opportunities by promoting the conditions that enable economic growth and stability at home and abroad, strengthen national security by combatting threats and protecting the integrity of the financial system, and manage the U.S. Government’s finances and resources effectively.

Consistent with this mission, regulations of the Department and its constituent bureaus are promulgated to interpret and implement the laws as enacted by Congress and signed by the President. It is the policy of the Department to comply with applicable requirements to issue a Notice of Proposed Rulemaking and carefully consider public comments before adopting a final rule. Also, the Department invites interested parties to submit views on rulemaking projects while a proposed rule is being developed.

To the extent permitted by law, it is the policy of the Department to adhere to the regulatory philosophy and principles set forth in Executive Orders 12866, 13563, and 13609 and to develop regulations that maximize aggregate net benefits to society while minimizing the economic and paperwork burdens imposed on persons and businesses subject to those regulations.

**Alcohol and Tobacco Tax and Trade Bureau**

The Alcohol and Tobacco Tax and Trade Bureau (TTB) issues regulations to implement and enforce Federal laws relating to alcohol, tobacco, firearms, and ammunition excise taxes and certain non- tax laws relating to alcohol. TTB’s mission and regulations are designed to:

- (1) Collect the taxes on alcohol, tobacco products, firearms, and ammunition;
- (2) Protect the consumer by ensuring the integrity of alcohol products;
- (3) Ensure only qualified businesses enter the alcohol and tobacco industries; and
- (4) Prevent unfair and unlawful market activity for alcohol and tobacco products.

In FY 2024, TTB will continue its multi-year Regulations Modernization

effort by prioritizing projects that reduce regulatory burdens, streamline and simplify requirements, and improve service to regulated businesses. These actions include rulemaking on streamlining permit and qualification requirements for distilled spirits plants, wineries, and breweries, and completing rulemaking to modernize the regulations regarding wine labeling and to authorize additional wine treating materials and processes.

In addition, TTB will also prioritize publishing rulemaking to implement recommendations of the Department of the Treasury’s February 2022 report on Competition in the Markets for Beer, Wine, and Spirits, which was issued in response to Executive Order 14036, “Promoting Competition in the American Economy.” These actions focus on soliciting public comment on trade practice regulations that prevent anticompetitive practices and maintain a “level playing field” across the alcohol industry, and labeling and advertising regulations that would require alcohol beverage labels to include specific, content-related information on alcohol content, allergens, and other ingredients. They also include finalizing rulemaking on proposed new approved container sizes (“standards of fill”) for wine and distilled spirits.

The specific projects TTB plans to prioritize in FY 2024 are described below:

- *Streamlining and Modernizing the Permit Application Process (RINs: 1513–AC46, 1513–AC47, and 1513–AC48, Modernization of Permit and Registration Application Requirements for Distilled Spirits Plants, Permit Applications for Wineries, and Qualification Requirements for Brewers, respectively).*  
In FY 2022, TTB proposed regulatory changes to eliminate or streamline application and qualification requirements for distilled spirits plants and breweries. In FY 2024, TTB intends to publish a similar proposal for wineries, and to publish final rules to implement the changes for distilled spirits plants and breweries. These changes are expected to reduce the amount of information industry members must submit to TTB in connection with permit and similar applications to engage in regulated businesses and reduce the types of operational activities that require prior approval, and overall reduce the regulatory burden on both new and existing businesses.
- *Modernizing the Alcohol Beverage Labeling and Advertising Requirements (RIN: 1513–AC67, Modernization of*

### *Wine Labeling and Advertising Regulations).*

The Federal Alcohol Administration Act requires that alcohol beverages introduced in interstate commerce have a label approved under regulations prescribed by the Secretary of the Treasury. TTB conducted an analysis of its alcohol beverage labeling regulations to identify any that might be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with that analysis. These regulations were also reviewed to assess their applicability to the modern alcohol beverage marketplace. As a result of this review, in FY 2019, TTB proposed revisions to the regulations concerning the labeling requirements for wine, distilled spirits, and malt beverages. TTB anticipated that these regulatory changes would assist industry in voluntary compliance, decrease industry burden, and result in the regulated industries being able to bring products to market without undue delay. TTB received over 1,100 comments in response to the notice, which included suggestions for further revisions. In FY 2020, TTB published in the **Federal Register** (85 FR 18704) a final rule amending its regulations to make permanent certain of the proposed liberalizing and clarifying changes, and to provide certainty with regard to certain other proposals that commenters generally opposed and that TTB did not intend to adopt. In FY 2022, TTB published in the **Federal Register** (87 FR 7526) a final rule that addressed remaining issues related to the labeling of distilled spirits and malt beverages and reorganized those regulations to make them easier to read and understand, for which industry members expressed support. In FY 2024, TTB intends to complete this modernization initiative by publishing a final rule to similarly reorganize the wine labeling regulations, address the remaining labeling issues related to wine, and finalize the regulations related to the advertising of wine, distilled spirits, and malt beverages.

- *Authorizing the Use of Additional Wine Treating Materials and Soliciting Comments on Proposed Changes to the Limits on the Use of Wine Treating Materials to Reflect “Good Manufacturing Practice”* (1513–AC75).

TTB intends to propose to amend its regulations pertaining to the production of wine to authorize additional treatments that may be applied to wine and to juice from which wine is made. These proposed amendments are in response to requests from wine industry members. Although TTB may

administratively approve such treatments without amending the regulations, administrative approval does not guarantee acceptance in foreign markets of any wine so treated. Under certain international agreements, authorization of wine treatments through public notice facilitates the acceptance of exported wine made using those treatments in foreign markets. TTB also intends to propose for public comment additional changes to the regulations in response to a petition to allow more wine treating materials to be used within the limitations of “good manufacturing practice” rather than within specified numerical limits, thereby providing additional flexibility to winemakers.

- *Consideration of Updates to Trade Practice Regulations* (RIN: 1513–AC92).

In FY 2023, TTB issued an advance notice of proposed rulemaking to seek public comment on TTB’s trade practice regulations related to the Federal Alcohol Administration Act’s exclusive outlet, tied house, commercial bribery, and consignment sales prohibitions. Executive Order 14036 (“Promoting Competition in the American Economy”), the Department of the Treasury’s related February 2022 report (“Competition in the Markets for Beer, Wine, and Spirits”), and public comments related to that report have raised questions about whether these regulations could be improved. In FY 2024, TTB intends to review and consider the comments received in formulating potential proposals to amend the regulations.

- *Labeling and Advertising of Alcohol Beverages with Alcohol and Nutritional Content, Allergens, and Ingredients* (RIN: 1513–AC93, *Labeling and Advertising of Distilled Spirits, Wines, and Malt Beverages With Statements of Alcohol and Nutritional Content*; RIN: 1513–AC94, *Major Food Allergen Labeling for Wines, Distilled Spirits, and Malt Beverages*; and 1513–AC95, *Ingredient Labeling of Distilled Spirits, Wines, and Malt Beverages*).

TTB intends to request public comment on possible changes to its labeling and advertising regulations governing alcohol beverage products related to statements of alcohol and nutritional content, allergen labeling, and ingredient labeling. The February 2022 report issued by the Department of the Treasury (“Competition in the Markets for Beer, Wine, and Spirits”) discussed past and potential future proposals related to the labeling of alcohol beverage products with “serving facts” information. The report stated that TTB should revive or initiate rulemaking proposing mandatory

information on alcohol content, nutritional content, and appropriate serving sizes for alcohol beverage products, as well as ingredient labeling. TTB intends to publish two notices of proposed rulemaking (one on alcohol content and nutrition facts, and another on allergens) and an advance notice of proposed rulemaking on ingredient-labeling.

- *Standards of Fill for Wine and Distilled Spirits* (RIN: 1513–AC86).

TTB plans to publish a final rule to address its proposal published May 25, 2022 (87 FR 31787) to amend the regulations governing wine and distilled spirits containers. TTB proposed to add 10 additional authorized standards of fill for wine in response to requests it has received for such standards, and to be consistent with a Side Letter included as part of a U.S.–Japan Trade Agreement that addresses issues related to market access and, specifically, to alcohol beverage standards of fill. TTB also solicited comments on an alternative proposal to eliminate all but a minimum standard of fill for wine containers and all but a minimum and maximum for distilled spirits.

### **Office of the Comptroller of the Currency**

The Office of the Comptroller of the Currency (OCC) charters, regulates, and supervises all national banks and Federal savings associations (FSAs). The agency also supervises the Federal branches and agencies of foreign banks. The OCC’s mission is to ensure that national banks and FSAs operate in a safe and sound manner, provide fair access to financial services, treat customers fairly, and comply with applicable laws and regulations.

Regulatory priorities for fiscal year 2024 are described below.

- *Regulatory Capital Rule: Amendments Applicable to Large Banking Organizations and to Banking Organizations with Significant Trading Activity* (12 CFR part 3).

The OCC, the Federal Reserve Board, and the FDIC issued a joint notice of proposed rulemaking that would comprehensively revise the agencies’ risk-based capital rules, including revisions to the current standardized and advanced approaches capital rules.

- *Capital Requirements for Market Risk; Fundamental Review of the Trading Book* (12 CFR part 3).

The OCC, the Federal Reserve Board, and the FDIC issued a joint notice of proposed rulemaking to revise their respective capital requirements for market risk, which are generally applied to banking organizations with substantial trading activity. The OCC

expects the revisions to be generally consistent with the standards set forth in the Fundamental Review of the Trading Book published by the Basel Committee on Bank Supervision.

- *Long-term Debt Requirements for Large Bank Holding Companies, Certain Intermediate Holding Companies of Foreign Banking Organizations, and Large Insured Depository Institutions.*

The OCC, the Federal Reserve Board, and the FDIC, plan to issue a joint notice of proposed rulemaking that would require certain large depository institution holding companies, U.S. intermediate holding companies of foreign banking organizations, and certain insured depository institutions, to issue and maintain outstanding a minimum amount of long-term debt. The proposed rule would improve the resolvability of these firms in case of failure, reduce costs to the Depository Insurance Fund and mitigate financial stability and contagion risks by reducing the risk of loss to uninsured depositors.

#### Customs Revenue Functions

The Homeland Security Act of 2002 (the Act) provides that, although many functions of the former United States Customs Service were transferred to the Department of Homeland Security, the Secretary of the Treasury retains sole legal authority over customs revenue functions. The Act also authorizes the Secretary of the Treasury to delegate any of the retained authority over customs revenue functions to the Secretary of Homeland Security. By Treasury Department Order No. 100–16, the Secretary of the Treasury delegated to the Secretary of Homeland Security authority to prescribe regulations pertaining to the customs revenue functions subject to certain exceptions, but further provided that the Secretary of the Treasury retained the sole authority to approve such regulations.

During fiscal year 2024, CBP and Treasury plan to give priority to regulatory matters involving the customs revenue functions which streamline CBP procedures, protect the public, or are required by either statute or Executive Order. Examples of these efforts are described below.

- *Investigation of Claims of Evasion of Antidumping and Countervailing Duties.*

Treasury and CBP plan to finalize interim regulations (81 FR 56477) which amended CBP regulations implementing section 421 of the Trade Facilitation and Trade Enforcement Act of 2015, which set forth procedures to investigate claims of evasion of antidumping and countervailing duty orders.

- *Enforcement of Copyrights and the Digital Millennium Copyright Act.*

Treasury and CBP plan to finalize proposed amendments to the CBP regulations pertaining to importations of merchandise that violate or are suspected of violating the copyright laws, including the Digital Millennium Copyright Act (DMCA), in accordance with Title III of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) and Executive Order 13785, “Establishing Enhanced Collection and Enforcement of Anti-dumping and Countervailing Duties and Violations of Trade and Customs Laws.”

The proposed amendments are intended to enhance CBP’s enforcement efforts against increasingly sophisticated piratical goods, clarify the definition of piracy, simplify the detention process relative to goods suspected of violating the copyright laws, and prescribe new regulations enforcing the DMCA.

- *Merchandise Produced by Convict or Forced Labor or Indentured Labor under Penal Sanctions.*

Treasury and CBP plan to publish a proposed rule to update, modernize, and streamline the process for enforcing the prohibition in 19 U.S.C. 1307 against the importation of merchandise that has been mined, produced, or manufactured, wholly or in part, in any foreign country by convict labor, forced labor, or indentured labor under penal sanctions. The proposed rule would generally bring the forced labor regulations and detention procedures into alignment with other statutes, regulations, and procedures that apply to the enforcement of restrictions against other types of prohibited merchandise.

- *Non-Preferential Origin Determinations for Merchandise Imported From Canada or Mexico for Implementation of the Agreement Between the United States of America, the United Mexican States, and Canada (USMCA).*

Treasury and CBP plan to finalize a proposed rule to harmonize non-preferential origin determinations for merchandise imported from Canada or Mexico. Such determinations would be made using certain tariff-based rules of origin to determine when a good imported from Canada or Mexico has been substantially transformed resulting in an article with a new name, character, or use. Once finalized, the rule is intended to reduce administrative burdens and inconsistency for non-preferential origin determinations for merchandise imported from Canada or Mexico for purposes of the implementation of the USMCA.

- *Automated Commercial Environment (ACE) Required for Electronic Entry/Entry Summary (Cargo Release and Related Entry) Filings.*

Treasury and CBP plan to finalize interim regulations (80 FR 61278) which amended CBP regulations to name the Automated Commercial Environment (ACE) as a CBP-authorized electronic data interchange (EDI) system for the processing of electronic entry and entry summary filings.

- *Elimination of Paper-Based Bond Applications and the Automated Processing of Bond Applications.*

Treasury and CBP plan to publish a proposed rule to replace the paper-based bond application and approval process with a streamlined electronic process. The proposed rule would implement the successful National Customs Automation Program (NCAP) test of the electronic bond process.

#### Financial Crimes Enforcement Network

As administrator of the Bank Secrecy Act (BSA), the Financial Crimes Enforcement Network (FinCEN) is responsible for developing and implementing regulations that are the core of the Department’s anti-money laundering (AML) and countering the financing of terrorism (CFT) efforts. FinCEN’s responsibilities and objectives are linked to, and flow from, that role. In fulfilling this role, FinCEN seeks to enhance U.S. national security by making the financial system increasingly resistant to abuse by money launderers, terrorists and their financial supporters, and other perpetrators of crime.

The Secretary of the Treasury, through FinCEN, is authorized by the BSA to issue regulations requiring financial institutions to file reports and keep records that are highly useful in criminal, tax, or regulatory investigations, risk assessments, or proceedings, or intelligence or counter-intelligence activities, including analysis, to protect against terrorism. The BSA also authorizes FinCEN to require that designated financial institutions establish AML/CFT programs and compliance procedures. Recent legislation has given FinCEN the added authority and responsibility to develop a system for reporting the beneficial owners of certain legal entities in the United States. To implement and realize its mission, FinCEN has established regulatory objectives and priorities to safeguard the financial system from the abuses of financial crime, including terrorist financing, proliferation financing, money laundering, and other illicit activity.

These objectives and priorities include: (1) issuing, interpreting, and enforcing compliance with regulations implementing the BSA; (2) supporting, working with, and as appropriate overseeing compliance examination functions delegated by FinCEN to other Federal regulators; (3) managing the collection, processing, storage, and dissemination of data related to the BSA and beneficial ownership; (4) maintaining government-wide access services to that same data for authorized users with a range of interests; (5) conducting analysis in support of policymakers, law enforcement, regulatory and intelligence agencies, and (for compliance purposes) the financial sector; and (6) coordinating with and collaborating on AML/CFT initiatives with domestic law enforcement and intelligence agencies, as well as foreign financial intelligence units.

FinCEN's regulatory priorities for fiscal year 2024 include:

- *Beneficial Ownership Information Reporting Deadline Extension for Reporting Companies Created or Registered in 2024.*

FinCEN intends to finalize an amendment, proposed on September 28, 2023, to the beneficial ownership information (BOI) reporting rule (Reporting Rule) that FinCEN published on September 30, 2022. The amendment will extend the BOI filing deadline for entities created or registered on or after January 1, 2024, and before January 1, 2025, from 30 days to 90 days. This reporting extension will provide those entities with additional time to understand the new BOI reporting obligation and collect the necessary information to complete their filings. Entities created or registered on or after January 1, 2025, will have 30 days to file their BOI reports with FinCEN, as required under the original Reporting Rule.

- *Beneficial Ownership Information Access and Safeguards.*

FinCEN intends to issue a final rule entitled "Beneficial Ownership Information Access and Safeguards." The final rule will establish protocols to protect the security and confidentiality of the beneficial ownership information (BOI) that will be reported to FinCEN pursuant to the Bank Secrecy Act, as amended by Section 6403(a) of the Corporate Transparency Act, and will establish the framework for authorized recipients' access to the BOI reported.

- *Revisions to Customer Due Diligence Requirements for Financial Institutions.*

FinCEN intends to issue a notice of proposed rulemaking entitled

"Revisions to Customer Due Diligence Requirements for Financial Institutions," relating to Section 6403(d) of the Corporate Transparency Act (CTA). Section 6403(d) of the CTA requires FinCEN to revise its customer due diligence requirements for financial institutions to account for the changes created by the BOI reporting and access requirements set out in the CTA.

- *Exempting a System of Records from Certain Provisions of the Privacy Act of 1974.*

FinCEN intends to issue a final rule amending 31 CFR 1.36 to exempt a new system of records, entitled "FinCEN .004—Beneficial Ownership Information System," from certain provisions of the Privacy Act of 1974. The Beneficial Ownership Information (BOI) System is being established to implement the BOI reporting and access requirements set out in the Bank Secrecy Act (BSA), as amended by the Corporate Transparency Act. The exemptions are intended to increase the value of the system for law enforcement purposes and to comply with the BSA's prohibitions against unauthorized disclosure of certain information.

- *Residential Real Estate Transaction Reports and Records.*

FinCEN intends to issue a notice of proposed rulemaking to address money laundering threats in the U.S. residential real estate sector.

- *Anti-Money Laundering Program and Suspicious Activity Report Filing Requirement for Investment Advisers.*

FinCEN intends to issue a notice of proposed rulemaking that would prescribe minimum standards for anti-money laundering programs to be established by certain investment advisers and to require such investment advisers to report suspicious activity to FinCEN pursuant to the Bank Secrecy Act.

- *Section 6101. Establishment of National Exam and Supervision Priorities.*

FinCEN intends to issue a notice of proposed rulemaking as part of the establishment of national exam and supervision priorities. The proposed rule implements Section 6101(b) of the Anti-Money Laundering Act of 2020 that requires the Secretary of the Treasury to issue and promulgate rules for financial institutions to carry out the government-wide anti-money laundering and countering the financing of terrorism priorities (AML/CFT Priorities). The proposed rule: (i) incorporates a risk assessment requirement for financial institutions; (ii) requires financial institutions to incorporate AML/CFT Priorities into risk-based programs; and (iii) provides

for certain technical changes. Once finalized, this proposed rule will affect all financial institutions subject to regulations under the Bank Secrecy Act that have AML/CFT program obligations.

- *Section 6314. Updating Whistleblower Incentives and Protection.*

FinCEN intends to issue a notice of proposed rulemaking to establish a whistleblower award program for eligible individuals that provide information regarding certain violations of the Bank Secrecy Act and U.S. economic sanctions. The proposed regulations would implement section 6314 of the Anti-Money Laundering Act of 2020 and the Anti-Money Laundering Whistleblower Improvement Act. Pursuant to the proposed regulations, potential whistleblowers would voluntarily provide information regarding relevant violations to FinCEN, the Department of Justice, or a whistleblower's employer. The proposed regulations would also govern the award phase of the whistleblower program. Potential whistleblowers would apply for an award following the successful enforcement of a covered judicial or administrative action. FinCEN would adjudicate such award applications pursuant to the proposed regulations and would pay awards to eligible whistleblowers from the Financial Integrity Fund (Fund). As set forth in 31 U.S.C. 5323, the structure of the Fund is such that monetary sanctions collected by the Secretary or Attorney General in any judicial or administrative action under title 31, chapter 35 or section 4305 or 4312 of title 50, or the Foreign Narcotics Kingpin Designation Act will be deposited into the Fund, (or an amount equal to those sanctions will be credited to the Fund), unless the balance of the Fund at the time the monetary sanction is collected exceeds \$300,000,000.

- *Commercial Real Estate Transaction Reports and Records.*

FinCEN intends to issue a notice of proposed rulemaking to address money laundering threats in the U.S. commercial real estate sector.

- *Other Requirements.*

FinCEN also will continue to issue proposed and final rules pursuant to section 311 of the USA PATRIOT Act, as appropriate. Finally, FinCEN expects that it may propose various technical and other regulatory amendments in conjunction with ongoing efforts with respect to a comprehensive review of existing regulations to enhance regulatory efficiency required by Section 6216 of the Anti-Money Laundering Act of 2020.

## Bureau of the Fiscal Service

The Bureau of the Fiscal Service (Fiscal Service) administers regulations pertaining to the Government's financial activities, including: (1) implementing Treasury's borrowing authority, including regulating the sale and issue of Treasury securities; (2) administering Government revenue and debt collection; (3) administering government-wide accounting programs; (4) managing certain Federal investments; (5) disbursing the majority of Government electronic and check payments; (6) assisting Federal agencies in reducing the number of improper payments; and (7) providing administrative and operational support to Federal agencies through franchise shared services.

During fiscal year 2024, Fiscal Service will accord priority to the following regulatory projects:

- *Revision of the Federal Claims Collection Standards*

Fiscal Service is proposing to amend the Federal Claims Collections Standards (FCCS), codified in 31 CFR parts 900–904, which is jointly administered by Treasury and the Department of Justice. The FCCS set standards for administrative collection, compromise, and suspension or termination of collection activity for federal nontax debts. They also set standards for referring federal nontax debts to DOJ for litigation. The proposed amendments, which have been jointly prepared by Treasury and DOJ, include revisions for equity and updates to conform to developments since the last publication of the regulations in 2000.

- *Amendment of Electronic Payment Regulation*

Fiscal Service will be publishing a final rule to amend 31 CFR part 208, Management of Federal Agency Disbursements—Fiscal Service's regulation that implements a statutory mandate requiring the Federal Government to deliver non-tax payments by electronic funds transfer (EFT) unless a waiver is available. Among other things, the final rule strengthens the EFT requirement by narrowing the scope of existing waivers from the EFT mandate or requiring agencies to obtain Fiscal Service's approval to invoke certain existing waivers. The use of electronic payments has expanded significantly since the waivers from the EFT mandate were first published in 1998 and the final rule appropriately adjusts the waivers given the broad availability of safe and secure electronic payment options currently available.

## Internal Revenue Service

The Internal Revenue Service (IRS), working with Treasury's Office of Tax Policy, promulgates regulations that interpret and implement the Internal Revenue Code (Code), and other internal revenue laws of the United States. The purpose of these regulations is to carry out the tax policy determined by Congress in a fair, impartial, and reasonable manner, taking into account the intent of Congress, the realities of relevant transactions, the need for the Government to administer the rules and monitor compliance, and the overall integrity of the Federal tax system. The goal is to make the regulations practical and as clear and simple as possible, which reduces the burdens on taxpayers and the IRS.

During fiscal year 2024, the priority of the IRS and the Office of Tax Policy is to provide guidance, including proposed and final rules in certain cases, regarding implementation of key tax provisions of several public laws, including Public Law 117–169, known as the Inflation Reduction Act of 2022 (IRA), the CHIPS and Science Act of 2022, Public Law 117–167, the Infrastructure Investment and Jobs Act, Public Law 117–58, the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), enacted as Division O of the Further Consolidated Appropriations Act, 2020, Public Law 116–94, and the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), enacted as Division T of the Consolidated Appropriations Act, 2023, Public Law 117–328.

With regard to the following key provisions of the Code enacted by the IRA, Treasury and the IRS intend to issue guidance, including proposed and final rules in certain cases:

- The credit for alternative fuel refueling property under § 30C of the Code.
- The consumer vehicle credits under §§ 25E and 30D of the Code.
- The credit for sustainable aviation fuel under § 40B of the Code.
- The prevailing wage rate and apprenticeship requirements in § 45(b) as applicable for purposes of §§ 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 48, 48C, 48E, and 179D of the Code.
- The domestic content enhancements for purposes of §§ 45, 45Y, 48, 48E.
- The energy community enhancements for purposes of §§ 45, 45Y, 48, 48E.
- The extension and modification of the credit for carbon oxide sequestration under § 45Q of the Code.
- The zero-emission nuclear power PTC under § 45U of the Code.

- The clean hydrogen PTC under § 45V of the Code.
- The credit for qualified commercial clean vehicles under § 45W of the Code.
- The advanced manufacturing PTC under § 45X of the Code.
- The clean electricity PTC under § 45Y of the Code.
- The clean fuels production credit under § 45Z of the Code.
- The extension and modification of the investment tax credit (ITC) for energy property under § 48 of the Code.
- The allocation of amounts of environmental justice solar and wind capacity limitation to qualified solar and wind facilities under § 48(e) of the Code.
- The qualifying advanced energy project credit under § 48C of the Code.
- The advanced manufacturing ITC under § 48D of the Code as enacted by the CHIPS Act of 2022.
- The corporate alternative minimum tax under §§ 53, 55, 56, and 56A of the Code.
- The energy efficient commercial buildings deduction under § 179D of the Code.
- The excise tax on the repurchase of corporate stock under § 4501 of the Code.
- The elective payment and transfer of credits for energy property & electricity produced from certain renewable resources under §§ 6417 and 6418 of the Code.

Consistent with the Administration's goals of equity and fairness in tax administration, using new funding provided by the Inflation Reduction Act, the IRS will continue to reduce burdens for taxpayers. Underpayments by tax evaders shift burdens onto honest, hard-working Americans who follow the law as well as onto future generations. The funding is being used to help ensure that everyone pays their fair share. Pursuant to the Inflation Reduction Act, billions of dollars will go toward substantial service improvements for taxpayers as they interact with the IRS. The IRS is improving customer service, answering more calls, processing returns and refunds faster, updating computer systems, and simplifying tax filing. The IRS is also expanding the customer callback capability, which gives taxpayers an alternative to waiting on hold. This reduces burden and frustration for taxpayers.

Although taxpayers can still choose to use paper-based processes to file returns, the IRS is transitioning to digital platforms, with better data tools to make more filings and processes available electronically, reducing audits and retiring paper-based processes. IRS employees still need to manually



transcribe millions of paper returns. However, the IRS is automating the scanning of millions of individual paper returns into digital copies. For taxpayers, this means faster processing and, ultimately, faster refunds for paper filers.

The IRS is expanding the use of issue resolution tools so that taxpayers can access their own online account and get the information they need without the need of an IRS assister. The new IRS Online Account features make it easier to communicate with the IRS where most issues can be resolved online.

Every year, Treasury and the IRS identify guidance projects that are priorities for allocation of resources during the year in the Priority Guidance Plan (PGP) (available on [irs.gov](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 *2022–2023 Priority Guidance Plan* (May 5, 2023). To facilitate and encourage suggestions, Treasury and the IRS have developed an annual process for soliciting public input for guidance projects. The annual solicitation is done through the issuance of a notice inviting recommendations from the public for items to be included on the PGP for the upcoming plan year. See, for example, *Notice 2023–36* (May 4, 2023). We also invite the public to provide us with their comments and suggestions for guidance projects throughout the year.

BILLING CODE 4810-AK-P

## DEPARTMENT OF VETERANS AFFAIRS (VA)

### Statement of Regulatory Priorities

The Department of Veterans Affairs (VA) administers services and benefit programs that recognize the important federal obligations to those who served this Nation. VA's regulatory responsibility is almost solely confined to carrying out mandates of the laws enacted by Congress relating to programs for veterans and their families. VA's major regulatory objective is to implement these laws with fairness, justice, and efficiency.

Most of the regulations issued by VA involve at least one of three VA components: the Veterans Benefits Administration, the Veterans Health Administration, and the National Cemetery Administration. The primary mission of the Veterans Benefits Administration is to provide high-quality and timely nonmedical benefits to eligible veterans and their dependents. The primary mission of the Veterans Health Administration is to provide high-quality health care on a timely basis to eligible veterans through its system of medical centers, nursing homes, domiciliaries, and outpatient medical and dental facilities. The primary mission of the National Cemetery Administration is to memorialize eligible veterans, members of the Reserve components, and their dependents in VA National Cemeteries and to maintain those cemeteries as

national shrines in perpetuity as a final tribute of a grateful Nation to commemorate their service and sacrifice to our Nation.

VA's regulatory priorities also reflect our robust engagement process with stakeholders and our strong culture of evidence-based decision making. Through regular stakeholder meetings, public hearings, Small Business Advocacy Review Panels, and public comments on proposed regulations, the Department engages with diverse stakeholders to seek input on our regulatory agenda overall or feedback on proposed rules. When VA publishes a proposed rule, it is current practice to send a Plain Language Summary Document (PLSD) to VSOs, Congress and Intergovernmental Affairs offices notifying them that a proposed rule is open for public comment. We also do this for Final rules and in some instances, we send a Press Release document in lieu of the PLSD. A Press Release and a PLSD is a summary of the published rule, its impacts, why the rule is necessary and who the rule impacts. Among the specific rules described below, we include further details on previous stakeholder engagement and future opportunities for stakeholder engagement. VA's regulatory priority plan consists of thirteen (13) priority regulations. The regulations listed below are not in any priority order.

BILLING CODE 8320-01-P

1	<p><b>AR96 - Amendments to the Caregivers Program</b></p> <p><b>Summary:</b> The rule will propose amendments to the eligibility criteria, definitions used, and consider other changes to evaluation processes for the Program of Comprehensive Assistance for Family Caregivers, which provides services and benefits, including a monthly stipend, for eligible caregivers of veterans who sustained a serious injury or illness in the line of duty.</p> <p><b>Rule Type:</b> Proposed Rule  <b>EO 12866:</b> 3(f)(1) Significant  <b>EO 14094:</b> Yes  <b>Estimated Publication Date:</b> 3/00/24</p>
2	<p><b>AS00 - Revision of Veterans Community Care Program (VCCP) Access Standards</b></p> <p><b>Summary:</b> VA proposes to revise its designated access standards for purposes of the Veterans Community Care Program to consider a veteran's preference for telehealth when scheduling appointments. VA additionally proposes to consider whether and how to address standards for when a VA provider is not available within the existing average drive time standards.</p> <p><b>Rule Type:</b> Proposed Rule  <b>EO 12866:</b> Other Significant  <b>EO 14094:</b> No  <b>Estimated Publication Date:</b> 4/00/24</p>
3	<p><b>AQ95 - Update and Clarify Regulatory Bars to Benefits Based on Character of Discharge</b></p> <p><b>Summary:</b> The Department of Veterans Affairs (VA) is amending its regulations regarding character of discharge determinations. The amendments will modify the regulatory framework for discharges considered "dishonorable" for VA benefit eligibility purposes, such as discharges due to "willful and persistent misconduct," an offense involving "moral turpitude," and homosexual acts involving aggravating circumstances or other factors affecting the "performance of duty." This rule contains early public participation/engagement in the rulemaking process in accordance with Executive Order 14094.</p> <p><b>Rule Type:</b> Final Rule  <b>EO 12866:</b> 3(f)(1) Significant  <b>EO 14094:</b> Yes  <b>Estimated Publication Date:</b> 1/00/24</p>
4	<p><b>AR10 - Updating VA Adjudication Regulations for Disability or Death Benefit Claims Related to Herbicide Exposure.</b></p> <p><b>Summary:</b> 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 <i>Nehmer</i> 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</p>

	<p>and also proposes to codify longstanding procedures for searching for payees entitled to <i>Nehmer</i> class action settlement payments. This proposed rule incorporates the provisions contained in VA's RIN 2900-AR45, titled, "Diseases Associated with Exposure to Certain Herbicide Agents (Bladder Cancer, Parkinsonism, and Hypothyroidism)" as a result of VA withdrawing RIN 2900-AR45 from the Fall 2022 Unified Agenda. A future regulation will be published to all of VA's adjudication regulations with controlling statute. This future regulation will also ensure that eligible Veterans are not denied the benefits they are entitled to and will allow VA to correct previous improper denials of service connection.</p> <p><b>Rule Type:</b> Proposed Rule  <b>EO 12866:</b> Section 3(f)(1) Significant  <b>EO 14094:</b> No  <b>Estimated Publication Date:</b> 1/00/24</p>
5	<p><b>AR25 - Presumptive Service Connection for Respiratory Conditions Due to Exposure to Particulate Matter</b></p> <p><b>Summary:</b> This rulemaking adopts as final, with changes, an interim final rule that amended the Department of Veterans Affairs (VA) adjudication regulations governing presumptive service connection based on presumed exposures to fine particulate matter. The amendment was necessary to provide health care, services, and benefits to Gulf War Veterans who were exposed to fine particulate matter associated with deployment to the Southwest Asia theater of operations, as well as Afghanistan, Syria, Djibouti, and Uzbekistan. The amendment eased the evidentiary burden of Gulf War Veterans who file claims with VA for asthma, rhinitis, and sinusitis, to include rhinosinusitis.</p> <p><b>Rule Type:</b> Final Rule  <b>EO 12866:</b> 3(f)(1) Significant  <b>EO 14094:</b> No  <b>Estimated Publication Date:</b> 9/1/23</p>
6	<p><b>AR44 - Presumptive Service Connection for Rare Respiratory Cancers Due to Exposure to Fine Particulate.</b></p> <p><b>Summary:</b> This rulemaking adopts as final, without changes, an interim final rule amending the Department of Veterans Affairs (VA) adjudication regulations to establish presumptive service connection for nine rare respiratory cancers in association with presumed exposure to fine particulate matter. These presumptions apply to Veterans with a qualifying period of service, <i>i.e.</i>, who served on active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War (hereinafter Gulf War), from August 2, 1990, onward, as well as in Afghanistan, Syria, Djibouti, or Uzbekistan, on or after September 19, 2001, during the Gulf War. This rulemaking implements a decision by the Secretary of Veterans Affairs that determined there is sufficient evidence to support these cancers as presumptive based on exposure to fine particulate matter during service in the Southwest Asia theater of operations, Afghanistan, Syria, Djibouti, or Uzbekistan during certain periods and the subsequent development of the following rare respiratory cancers: squamous cell carcinoma (SCC) of the larynx, SCC of the trachea, adenocarcinoma of the trachea, salivary gland-type tumors of the trachea, adenosquamous carcinoma of the lung, large cell carcinoma of the lung, salivary gland-type tumors of the lung, sarcomatoid carcinoma of the lung, and typical and atypical carcinoid of the lung. The intended effect of this rulemaking is to ease the evidentiary burden of this population of Veterans who file claims with VA for these nine rare respiratory cancers.</p> <p><b>Rule Type:</b> Final Rule  <b>EO 12866:</b> Other Significant  <b>EO 14094:</b> No  <b>Estimated Publication Date:</b> 11/00/23</p>

7	<p><b>AR47 – Expanding Veterans Cemetery Grant Program (VCGP) Grants to Include Training Costs.</b></p> <p><b>Summary:</b> VA proposes to amend its regulations regarding aid for the establishment, expansion, and improvement, or operation and maintenance of Veterans cemeteries to implement new authorities provided in section 2208 of The Veterans Health Care and Benefits Improvement Act of 2020.</p> <p><b>Rule Type:</b> Proposed Rule  <b>EO 12866:</b> Other Significant  <b>EO 14094:</b> No  <b>Estimated Publication Date:</b> 6/00/24</p>
8	<p><b>AR68 - Veteran and Spouse Transitional Assistance Grant Program</b></p> <p><b>Summary:</b> VA, as authorized under the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020, amends its regulations to establish the Veteran Transitional Assistance Grant Program (VTAGP). VA will establish grant application procedures and evaluative criteria for determining whether to issue funding to eligible organizations providing transition services to members of the Armed Forces who are separated, retired, or discharged, as well as their spouses.</p> <p><b>Rule Type:</b> Final Rule  <b>EO 12866:</b> Other Significant  <b>EO 14094:</b> No  <b>Estimated Publication Date:</b> 11/00/23</p>
9	<p><b>AR75 - Updating VA Adjudication Regulations for Disability or Death Benefits Based on Toxic Exposure.</b></p> <p><b>Summary:</b> The Department of Veterans Affairs is proposing to amend its adjudication regulations to implement provisions of the Sergeant First Class Heath Robinson Honoring our Promise to Address comprehensive Toxics Act of 2022, Public Law 117-168 (PACT Act). The statute amended procedures applicable to claims based on toxic exposure and modified or established presumptions of service connection related to toxic exposure. Pursuant to the Act, VA is proposing to remove the manifestation period requirement and the minimum compensable evaluation requirement from Gulf War claims based on undiagnosed illness and medically unexplained chronic multi-symptom illnesses. VA is also proposing to expand the definition of a Persian Gulf Veteran and update the list of locations eligible for a presumption of exposure to toxic substances, chemicals, or hazards based on Gulf War service. To implement additional provisions of the Act, VA is also proposing to codify the procedure for determining when examinations and medical nexus opinions are required for claims based on toxic exposure.</p> <p><b>Rule Type:</b> Proposed Rule  <b>EO 12866:</b> Other Significant  <b>EO 14094:</b> No  <b>Estimated Publication Date:</b> 1/00/24</p>
10	<p><b>AR76 - Reevaluation of Claims for Dependency and Indemnity Compensation Based on Public Law 117-168</b></p> <p><b>Summary:</b> The Department of Veterans Affairs (VA) amends its adjudication regulations concerning certain awards of Dependency and Indemnity Compensation (DIC). Under this amendment, relevant claimants will be eligible to elect to have certain previously denied DIC claims reevaluated pursuant to changes that establish or modify a presumption of service connection. Any award as a result of the reevaluation may be made retroactive as if the establishment or modification of the presumption of service connection had been in effect on the date of the submission of the original claim. This amendment incorporates legislative changes enacted by the PACT Act and will bring Federal regulations into conformance with those changes.</p>

	<p><b>Rule Type:</b> Final Rule  <b>EO 12866:</b> Section 3(f)(1) Significant  <b>EO 14094:</b> No  <b>Estimated Publication Date:</b> 11/00/23</p>
11	<p><b>AR91 - Evidence Requirements for Direct Service Connection of Covered Mental Health Conditions Based on In-Service Personal Trauma.</b></p> <p><b>Summary:</b> VA is proposing to amend regulations concerning the type of evidence that may be used to support a veteran's statement regarding the occurrence of an in-service personal trauma. VA is also proposing to define key terms relevant to such claims. These amendments will provide greater specificity and clarity to the regulatory text and aid claims processors who develop and decide claims based on in-service personal trauma. The intent of this change is to ease the evidentiary requirements for veterans claiming a mental health condition based on in-service personal trauma.</p> <p><b>Rule Type:</b> Proposed Rule  <b>EO 12866:</b> Other Significant  <b>EO 14094:</b> No  <b>Estimated Publication Date:</b> 2/00/24</p>
12	<p><b>AR73 - Technical Revisions to Expand Health Care for Certain Toxic Exposure and Overseas Contingency Service (Section 103 PACT Act)</b></p> <p><b>Summary:</b> 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.</p> <p><b>Rule Type:</b> Proposed Rule  <b>EO 12866:</b> Other Significant  <b>EO 14094:</b> No  <b>Estimated Publication Date:</b> 8/00/24</p>
13	<p><b>AQ30 – Modifying Copayments for Veterans at High Risk for Suicide</b></p> <p><b>Summary:</b> The Department of Veterans Affairs (VA) is finalizing a proposed rule s to amend its medical regulations governing copayments for VA outpatient medical care and medications (to include outpatient medical care and medications provided by VA directly or community care obtained by VA through contracts, provider agreements or sharing agreements) by eliminating the copayment for outpatient care and reducing the copayment for medications dispensed to veterans identified by VA as being at high risk for suicide. These copayment changes will be applied until VA determines that the veteran is no longer at high risk for suicide.</p> <p><b>Rule Type:</b> Final Rule  <b>EO 12866:</b> Other Significant  <b>EO 14094:</b> No  <b>Estimated Publication Date:</b> 9/00/24</p>

VA

Proposed Rule Stage

177. Updating VA Adjudication Regulations for Disability or Death Benefit Claims Related to Herbicide Exposure [2900–AR10]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 38 U.S.C. 1116; 38 U.S.C. 1116A; 38 U.S.C. 1116B; 38 U.S.C. 1821; 38 U.S.C. 1822

*CFR Citation:* 38 CFR 3.30; 38 CFR 3.309; 38 CFR 3.105; 38 CFR 3.114; 38 CFR 3.313; 38 CFR 3.81.

*Legal Deadline:* None.

*Abstract:* The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations relating to exposure to herbicides, such as Agent Orange, in order to incorporate the provisions of the Blue Water Navy Vietnam Veterans Act of 2019 (the BWN Act). This proposed rule would extend the presumed area of exposure to the offshore waters of the Republic of Vietnam and expand the date ranges for presumption of exposure in the Republic of Vietnam and Korea. This rule would also clarify the definition of a Nehmer class member and establish entitlement to spina bifida benefits for children of certain veterans who served in Thailand. On the basis of VA’s general rulemaking authority, VA also proposes to establish a presumption of herbicide exposure for certain veterans who served in Thailand and also proposes to codify longstanding procedures for searching for payees entitled to Nehmer class action settlement payments. This proposed rule incorporates the provisions contained in VA’s RIN 2900–AR45, titled, “Diseases Associated with Exposure to Certain Herbicide Agents (Bladder Cancer, Parkinsonism, and Hypothyroidism)” as a result of VA withdrawing RIN 2900–AR45 from the Fall 2022 Unified Agenda. A future Interim Final Rule will be published to align all of VA’s adjudication regulations with controlling statute. This future regulation will also ensure that eligible Veterans are not denied the benefits they are entitled to and will allow VA to correct previous improper denials of service connection.

*Statement of Need:* The Department of Veterans Affairs (VA) is proposing to amend its regulations for the following purposes: (1) extend the presumption of herbicide exposure to the offshore waters of the Republic of Vietnam and to define those boundaries; (2) expand the dates for presumption of herbicide exposure for service in the Korean Demilitarized Zone; (3) establish

entitlement to spina bifida benefits for children of certain Veterans who served in Thailand; (4) codify the presumption of herbicide exposure for certain locations identified where herbicide agents were used, tested, or stored outside of Vietnam; (5) codify longstanding procedures for searching for payees entitled to class-action settlements under *Nehmer v. Department of Veterans Affairs*; (6) apply the definition of Republic of Vietnam offshore waters to presumptive service connection claims for non-Hodgkin’s lymphoma; (7) add bladder cancer, hypothyroidism, and Parkinsonism as presumptive herbicide diseases; and (8) recognize hypertension and monoclonal gammopathy of undetermined significant as presumptive herbicide diseases.

*Summary of Legal Basis:* Promulgation of these regulations is necessitated by the Blue Water Navy Vietnam Veterans Act of 2019, Public Law 116–123; Fiscal Year 2021 National Defense Authorization Act; and the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 (PACT Act), Public Law 117–168. VA’s general rulemaking authority under 38 U.S.C. 501(a) is also utilized in effectuating these regulations.

*Alternatives:* The comprehensive framework of the enacted laws requires VA to issue regulations to ensure that claims processors accurately and consistently adjudicate claims pursuant to the intent and text of the legislation. The absence of regulations would cause confusion amongst adjudicators leading to benefit decision errors, as well as incurring significant litigation risk if the only instruction concerning application of the aforementioned laws is sub-regulatory guidance that did not go through notice-and-comment as required by the Administrative Procedures Act.

*Anticipated Cost and Benefits:* VA has estimated that there are both transfers and costs associated with the provisions of this rulemaking. The total transfers are estimated to be \$59.9 billion over 10 years. Actual transfers and costs will be determined and reflected in this section of ROCIS once the Reg is formally sent to OMB for a formal Executive Order 12866 review.

*Risks:* None.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/24	

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*URL For More Information:* [www.regulations.gov](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–AR10

VA

178. Expanding Veterans Cemetery Grant Program (VCGP) Grants To Include Training Costs [2900–AR47]

*Priority:* Other Significant.

*Legal Authority:* 5 U.S.C. 605(b); 2 U.S.C. 1532; 38 U.S.C. 101; 25 U.S.C. 450b(l)

*CFR Citation:* 38 CFR 39.34.

*Legal Deadline:* None.

*Abstract:* VA proposes to amend its regulations regarding aid for the establishment, expansion, and improvement, or operation and maintenance of Veterans cemeteries to implement new authorities provided in section 2208 of The Veterans Health Care and Benefits Improvement Act of 2020. The Act authorizes VA to expand the use of Veterans Cemetery Grant Program (VCGP) funds to include training costs for State and Tribal cemetery personnel to participate in training provided by the National Cemetery Administration (NCA).

*Statement of Need:* This rulemaking is needed for the Department of Veteran Affairs (VA) to amend its regulations, in accordance with 38 U.S.C. 501, to implement new authorities enacted in Section 2208 of Public Law 116–315, The Veterans Health Care and Benefits Improvement Act of 2020. That Public Law amended section 2408 of title 38, United States Code (U.S.C.).

*Summary of Legal Basis:* VA proposes to amend its regulations regarding aid for the establishment, expansion, and improvement, or operation and maintenance of Veterans cemeteries to implement new authorities provided in section 2208. The Act authorized VA to expand the use of Veterans Cemetery Grant Program (VCGP) funds to include training costs for State and Tribal cemetery personnel to participate in training provided by the National Cemetery Administration (NCA).

*Alternatives:* Because VA must implement new grants authority in regulation, there are no practical alternatives to rulemaking. Grantees can choose to apply for training grant funds or expend their own resources to send employees to attend NCA training.

However, as mentioned above, because many grantees lack sufficient fiscal resources for their employees to attend NCA training, VA anticipates increased participation from grantee-cemetery employees. The proposed approach limits the number of employees the State or Tribal Organizations can have attending training and those entities will continue to have difficulty meeting the same national shrine standards and measures as VA national cemeteries.

**Anticipated Cost and Benefits:** The primary benefit of this program expansion will assist VA grant-funded State and Tribal Veterans' cemeteries in meeting NCA operational standards and measures. This includes the appearance in the key cemetery areas of cleanliness, height and alignment of headstones and markers, leveling of gravesites, and turf conditions. VA estimates transfers of \$89,916 for Fiscal Year (FY) 2023 and \$458,661 for FY 2023–FY 2027.

**Risks:** TBD.

**Timetable:**

Action	Date	FR Cite
NPRM .....	06/00/24	

**Regulatory Flexibility Analysis Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** None.

**URL For More Information:**

[www.regulations.gov](http://www.regulations.gov).

**Agency Contact:** George Eisenbach, Director, Veterans Cemetery Grants Program, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, Phone: 202 632–7369, Email: [george.eisenbach@va.gov](mailto:george.eisenbach@va.gov).  
**RIN:** 2900–AR47

## VA

### 179. Technical Revisions To Expand Health Care for Certain Toxic Exposure and Overseas Contingency Service [2900–AR73]

**Priority:** Other Significant.

**Legal Authority:** 38 U.S.C. 1710; Pub. L. 117–168 sec. 103(a)

**CFR Citation:** 38 CFR 17.36; 38 CFR 17.108; 38 CFR 17.110; 38 CFR 17.111; 38 CFR 51.50.

**Legal Deadline:** None.

**Abstract:** The Department of Veterans Affairs (VA) proposes to amend its medical regulations governing eligibility for VA health care and copayment requirements to conform to recent statutory changes made by section 103 of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of

2022, Public Law 117–168 (PACT Act). VA is changing its medical benefits enrollment criteria to include toxic-exposed veterans and veterans who supported certain overseas contingency operations, to exempt such veterans from copayments for certain care, and to provide per diem for nursing home care for such veterans.

**Statement of Need:** This rulemaking is necessary to implement the provisions of section 103(a) of the Honoring our Promise to Address Comprehensive Toxics Act of 2022, Public Law 117–168 (PACT Act), which expanded the provision of health care and nursing home care to new groups of toxic-exposed veterans. This rule would also amend VA's medical regulations to exempt such veterans from copayments for certain care.

**Summary of Legal Basis:** Pursuant to 38 U.S.C. 1710, VA proposes to amend its medical regulations and regulations on per diem for nursing home care of veterans in State homes. This would conform with changes made to 38 U.S.C. 1710 by section 103 of the PACT Act.

**Alternatives:** TBD.

**Anticipated Cost and Benefits:** TBD.

**Risks:** Delayed access to health care for these toxic-exposed veterans that would be newly-eligible for VA health care. These additional groups of toxic-exposed veterans who are already enrolled in VA health care would continue to be charged copayments for care of illness related to their toxic exposures until these changes are made.

**Timetable:**

Action	Date	FR Cite
NPRM .....	08/00/24	

**Regulatory Flexibility Analysis Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** None.

**URL For More Information:**

[www.regulations.gov](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

### 180. Updating VA Adjudication Regulations for Disability or Death Benefits Based on Toxic Exposure [2900–AR75]

**Priority:** Other Significant.

**Legal Authority:** 38 U.S.C. 1117; 38 U.S.C. 1119; 38 U.S.C. 1120; 38 U.S.C. 501

**CFR Citation:** 38 CFR 3.159; 38 CFR 3.317; 38 CFR 3.320.

**Legal Deadline:** None.

**Abstract:** The Department of Veterans Affairs is proposing to amend its adjudication regulations to implement provisions of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Public Law 117–168 (PACT Act). The statute amended procedures applicable to claims based on toxic exposure and modified or established presumptions of service connection related to toxic exposure. Pursuant to the Act, VA is proposing to remove the manifestation period requirement and the minimum compensable evaluation requirement from Gulf War claims based on undiagnosed illness and medically unexplained chronic multi-symptom illnesses. VA is also proposing to expand the definition of a Persian Gulf Veteran and update the list of locations eligible for a presumption of exposure to toxic substances, chemicals, or hazards based on Gulf War service. To implement additional provisions of the Act, VA is also proposing to codify the procedure for determining when examinations and medical nexus opinions are required for claims based on toxic exposure.

**Statement of Need:** The Department of Veterans Affairs is proposing to amend its adjudication regulations to implement provisions of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Public Law 117–168 (PACT Act). The statute amended procedures applicable to claims based on toxic exposure and modifies or establishes presumptions of service connection related to toxic exposure.

**Summary of Legal Basis:** The new provisions of regulation are authorized by sections 302, 303, 405 and 406 of Public Law 117–168. VA must publish regulations to carry out the laws administered by the Department as required by 38 U.S.C. 501(a).

**Alternatives:** The comprehensive framework of the enacted law requires VA to issue regulations to ensure that claims processors accurately and consistently adjudicate claims pursuant to the intent and text of the legislation. The absence of regulations would cause confusion amongst adjudicators leading to benefit decision errors, as well as incurring significant litigation risk if the only instruction concerning application of the aforementioned law is sub-regulatory guidance that did not go through notice-and-comment as



required by the Administrative Procedures Act.  
*Anticipated Cost and Benefits:* Actual costs and transfers will be determined and reflected in this section of ROCIS once the rule is formally sent to OMB for a formal Executive Order 12866 review.

*Risks:* None.  
*Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/24	

*Regulatory Flexibility Analysis Required:* No.  
*Small Entities Affected:* No.  
*Government Levels Affected:* None.  
*URL For More Information:* [www.regulations.gov](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-AR75

**VA**  
**181. Evidence Requirements for Direct Service Connection of Covered Mental Health Conditions Based on In-Service Personal Trauma [2900-AR91]**

*Priority:* Other Significant. Major status under 5 U.S.C. 801 is undetermined.  
*Legal Authority:* 38 U.S.C. 501  
*CFR Citation:* 38 CFR 3.304.  
*Legal Deadline:* None.  
*Abstract:* VA is proposing to amend regulations concerning the type of evidence that may be used to support a veteran's statement regarding the occurrence of an in-service personal trauma. VA is also proposing to define key terms relevant to such claims. These amendments will provide greater specificity and clarity to the regulatory text and aid claims processors who develop and decide claims based on in-service personal trauma. The intent of this change is to ease the evidentiary requirements for veterans claiming a mental health condition based on in-service personal trauma.  
*Statement of Need:* TBD—The statement of need is still pending but will be determined and reflected in this section of ROCIS once the Reg is formally sent to OMB for a formal Executive Order 12866 review.  
*Summary of Legal Basis:* TBD—The legal basis for this Reg is still pending but will be determined and reflected in this section of ROCIS before the Reg is formally sent to OMB for a formal Executive Order 12866 review.

*Alternatives:* TBD—Alternatives are still pending but will be determined and reflected in this section of ROCIS before the Reg is formally sent to OMB for a formal Executive Order 12866 review.  
*Anticipated Cost and Benefits:* TBD—Actual costs and transfers are still pending but will be determined and reflected in this section of ROCIS before the Reg is formally sent to OMB for a formal Executive Order 12866 review.  
*Risks:* TBD—Risks are still pending but will be determined and reflected in this section of ROCIS before the Reg is formally sent to OMB for a formal Executive Order 12866 review.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/00/24	

*Regulatory Flexibility Analysis Required:* No.  
*Small Entities Affected:* No.  
*Government Levels Affected:* None.  
*Agency Contact:* Robert Parks, Department of Veterans Affairs, 1800 G Street NW, Washington, DC 20006, Phone: 202 461-9700, Email: [robert.parks3@va.gov](mailto:robert.parks3@va.gov), RIN: 2900-AR91

**VA**  
**182. Amendments to the Caregivers Program [2900-AR96]**

*Priority:* Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.  
*Legal Authority:* 38 U.S.C. 1720G  
*CFR Citation:* Not Yet Determined.  
*Legal Deadline:* None.  
*Abstract:* The rule will propose amendments to the eligibility criteria, definitions used, and consider other changes to evaluation processes for the Program of Comprehensive Assistance for Family Caregivers, which provides services and benefits, including a monthly stipend, for eligible caregivers of veterans who sustained a serious injury or illness in the line of duty.  
*Statement of Need:* This rulemaking is necessary to implement several changes to VA's Program of Comprehensive Assistance for Family Caregivers (PCAFC) and Program of General Caregiver Support Services (PGCSS) to improve program operations, update eligibility criteria, and expand access to the programs for eligible veterans and servicemembers and their caregivers and comply with Executive Order 14095, Increasing Access to High-Quality Care and Supporting Caregivers, issued April 18, 2023, that required the Secretary of Veterans Affairs consider

issuing a notice of proposed rulemaking by the end of this fiscal year that would make any appropriate modifications to eligibility criteria for PCAFC. In accordance with Executive Order 14094, VA briefed the Veterans Service Organizations (VSO) on June 30th, 2023, during the rulemaking process.  
*Summary of Legal Basis:* Pursuant to its authority in 38 U.S.C. 1720G, VA proposes to amend its regulations under 38 CFR part 71, which governs PCAFC, a program that provides Family Caregivers of eligible veterans benefits, such as training, respite care, counseling, technical support, beneficiary travel, and for Primary Family Caregivers, provides a monthly stipend payment, and access to health care; and PGCSS, which is available to caregivers of covered veterans of all eras of military service. Proposed amendments would comply with the U.S. Court of Appeals for the Federal Circuit decision in *Veteran Warriors, Inc. v. Sec'y of Veterans Affairs*, 29 F.4th 1320 (Fed. Cir. 2022), which set aside a portion of VA's regulations concerning PCAFC eligibility criteria, specifically VA's definition of need for supervision, protection, and instruction as that term is used throughout 38 CFR part 71. VA proposes to remove conflicting language from its regulations.  
*Alternatives:* There are no acceptable policy alternatives to issuing this regulation.  
*Anticipated Cost and Benefits:* VA is still determining costs but anticipates costs to be over \$200 million in any given year of the 10-year estimate; VA anticipates this rule would be a section 3(f)(1) significant rule under Executive Order 12866.  
This rulemaking would expand access to caregiver benefits for eligible veterans based on proposed changes in eligibility criteria. Actual costs will be determined and reflected in this section of ROCIS once the Reg is formally sent to OMB for a formal Executive Order 12866 review.  
*Risks:* Delayed access to PCAFC for eligible veterans and their Family Caregivers.  
*Timetable:*

Action	Date	FR Cite
NPRM .....	03/00/24	

*Regulatory Flexibility Analysis Required:* No.  
*Small Entities Affected:* No.  
*Government Levels Affected:* None.  
*URL For More Information:* [www.regulations.gov](http://www.regulations.gov).  
*Agency Contact:* Colleen Richardson PsyD, Executive Director, Caregiver

Support Program, Patient Care Services, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, Phone: 202 461-7337, Email: colleen.richardson2@va.gov.  
RIN: 2900-AR96

## VA

### 183. • Revision of Veterans Community Care Program (VCCP) Access Standards [2900-AS00]

*Priority:* Other Significant.

*Legal Authority:* 38 U.S.C. 1703; 38 U.S.C. 1703B

*CFR Citation:* 38 CFR 17.4040.

*Legal Deadline:* None.

*Abstract:* VA proposes to revise its designated access standards for purposes of the Veterans Community Care Program to consider a veteran's preference for telehealth when scheduling appointments. VA additionally proposes to consider whether and how to address standards for when a VA provider is not available within the existing average drive time standards.

*Statement of Need:* This rulemaking is needed to implement certain provisions of section 125 of Division U of the Consolidated Appropriations Act, 2023, the Joseph Maxwell Cleland and Robert Joseph Dole Memorial Veterans Benefits and Health Care Improvement Act of 2022 (hereinafter referred to as the Act).

*Summary of Legal Basis:* Pursuant to 38 U.S.C. 1703 and 1703B and subject to regulations at 38 CFR 17.4000-17.4040, VA administers the Veterans Community Care Program (VCCP) to furnish care in the community to covered Veterans at their election and subject to the availability of appropriations. Consistent with 38 U.S.C. 1703(d)(1)(D) and 1703B, current 38 CFR 17.4010(a)(4) establishes eligibility for the VCCP if a covered veteran has contacted VA to request required care or services, but VA has determined it is not able to furnish such care or services in a manner that complies with VA's designated access standards in 17.4040. Section 125 of the Act amended section 1703B(f) to require VA to meet the access standards established under section 1703B(a) when furnishing care through VCCP and ensure that meeting such access standards is reflected in the contractual requirements of third-party administrators (TPA).

*Alternatives:* VA does not interpret that there is an alternative to implementing certain provisions of section 125 of the Act. VA does not

interpret that there is an alternative to a two-stage rulemaking because current VCCP regulations do not apply VA access standards to eligible entities and providers (non-VA providers) under TPA agreements, and to do so requires notice and comment prior to being implemented.

*Anticipated Cost and Benefits:* VA does not anticipate this rulemaking would result in \$200 million or more in costs or savings. VA anticipates benefits for Veterans as eligible entities and providers participating in VCCP would also be subject to measurable access standards designed to improve Veteran's access to care. Actual costs will be determined and reflected in this section of ROCIS once the Reg is formally sent to OMB for a formal Executive Order 12866 review.

*Risks:* None identified.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/00/24	

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*URL For More Information:*

[www.regulations.gov](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.

RIN: 2900-AS00

## VA

### Final Rule Stage

### 184. Modifying Copayments for Veterans at High Risk for Suicide [2900-AQ30]

*Priority:* Other Significant.

*Legal Authority:* 38 U.S.C. 1710(g); 38 U.S.C. 1722A

*CFR Citation:* 38 CFR 17.108; 38 CFR 17.110.

*Legal Deadline:* None.

*Abstract:* The Department of Veterans Affairs (VA) is finalizing a proposed rule to amend its medical regulations governing copayments for VA outpatient medical care and medications (to include outpatient medical care and medications provided by VA directly or community care obtained by VA through contracts, provider agreements or sharing agreements) by eliminating the copayment for outpatient care and reducing the copayment for medications dispensed to veterans identified by VA

as being at high risk for suicide. These copayment changes will be applied until VA determines that the veteran is no longer at high risk for suicide.

*Statement of Need:* This rulemaking is needed because a change in the current regulation is called for by the policy outlined in Executive Order 13822, which provides that our Government must improve mental healthcare and access to suicide prevention resources available to veterans. Healthcare research has provided extensive evidence that copayments can be barriers to healthcare for vulnerable patients, which places the change in line with the goals of the Executive order.

*Summary of Legal Basis:* Executive Order 13822.

*Alternatives:* The express intent of the rulemaking is to reduce barriers to mental health care for Veterans at high risk for suicide. To defer implementation of the regulation would be to undermine its purpose. However, alternative regulatory approaches were considered. It was considered whether VHA national or local policy changes could effectively meet the intent of the regulation. It was found that policy change is not a viable alternative due to regulatory constraints that prevent changes to copayment requirements. The timing of rulemaking was considered. There were no potential cost savings or other net benefits identified that would lead to a more beneficial option. A phase-in period for the regulation was considered. There were no burdens, likely failures, or negative comments identified that a phase-in period would help mitigate. There were no potential cost savings or other net benefits identified that would make phasing in the regulation a more beneficial option.

*Anticipated Cost and Benefits:* Outpatient medical care and medication copayments will be reduced for Veterans determined to be at high risk for suicide. VA strongly believes, based on extensive empirical evidence, that the provisions of this rulemaking will decrease the likelihood of fatal or medically serious overdoses from VA prescribed medications among Veterans who are at a high risk of suicide. VA also strongly believes, based on the evidence, that the provisions of this rulemaking will significantly increase the engagement of Veterans who are at a high risk of suicide in outpatient health care, which is known to decrease the risk of suicide and other adverse outcomes. Actual costs and/or transfers will be determined and reflected in this section of ROCIS once the Reg is

formally sent to OMB for a formal Executive Order 12866 review.

*Risks:* None.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/05/22	87 FR 418
NPRM Comment Period End.	03/07/22	
Final Action .....	09/00/24	

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*URL For More Information:* [www.regulations.gov](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**

**185. Update and Clarify Regulatory Bars to Benefits Based on Character of Discharge [2900–AQ95]**

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 38 U.S.C. 501

*CFR Citation:* 38 CFR 3.12.

*Legal Deadline:* None.

*Abstract:* The Department of Veterans Affairs (VA) is amending its regulations regarding character of discharge determinations. The amendments will modify the regulatory framework for discharges considered “dishonorable” for VA benefit eligibility purposes, such as discharges due to “willful and persistent misconduct,” an “offense involving moral turpitude,” and “homosexual acts involving aggravating circumstances or other factors affecting the performance of duty.” The amendments will also extend a “compelling circumstances” exception to certain regulatory bars to benefits in order to ensure fair character of discharge determinations in light of all pertinent factors. VA’s amendments will take into consideration the public comments received on the published proposed rule (85 FR 41471), comments that VA receives from a published Request for Information (86 FR 50513) and comments received during two scheduled listening sessions, which are described in aforementioned Request for Information.

*Statement of Need:* TBD. In accordance with Executive Order 14094, VA published a Request for Information (RFI) on September 9, 2021, 86 FR

50513 (2021) after the NPRM published. Specifically, the RFI asked questions about compelling circumstances, willful and persistent misconduct, moral turpitude, benefit eligibility and removing the regulatory bars. In addition to and subsequent of the RFI, VA held a two-day listening session in October 2021 to receive oral comments on the RFI questions.

*Summary of Legal Basis:* TBD.

*Alternatives:* TBD.

*Anticipated Cost and Benefits:* TBD.

*Risks:* TBD.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/10/20	85 FR 41471
NPRM Comment Period End.	09/08/20	
Request For Information (RFI).	09/09/21	86 FR 50513
RFI Comment Period End.	10/12/21	
Final Action .....	01/00/24	

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*URL For More Information:* [www.regulations.gov](http://www.regulations.gov).

*Agency Contact:* Olumayowa Famakinwa, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, Phone: 202 461–9700, Email: [olumayowa.famakinwa@va.gov](mailto:olumayowa.famakinwa@va.gov).

*RIN:* 2900–AQ95

**VA**

**186. Veteran and Spouse Transitional Assistance Grant Program [2900–AR68]**

*Priority:* Other Significant.

*Legal Authority:* 5 U.S.C. 601 to 612; 31 U.S.C. 302

*CFR Citation:* 38 CFR 63.6309.

*Legal Deadline:* None.

*Abstract:* VA, as authorized under the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020, amends its regulations to establish the Veteran Transitional Assistance Grant Program (VTAGP). VA will establish grant application procedures and evaluative criteria for determining whether to issue funding to eligible organizations providing transition services to members of the Armed Forces who are separated, retired, or discharged, as well as their spouses.

*Statement of Need:* The Department of Veterans Affairs (VA) has determined this rulemaking is necessary, in accordance with authority established

by Public Law (Pub. L.) 116–315 4304 and 38 U.S.C. 501, 512 to implement Public Law 116315 4304, the Johnny Isakson and David P. Roe, M.D. Veterans Health Care and Benefits Improvement Act of 2020 (January 5, 2021). VA proposes to amend title 38 Pensions, Bonuses, and Veterans’ Relief by adding part 80 and new sections 80.1 through 80.17 to the Code of Federal Regulations (CFR) to implement this new grant authority.

*Summary of Legal Basis:* VA proposes regulations to establish the Veteran and Spouse Transitional Assistance Grant Program (VSTAGP). VA will establish grant application procedures and evaluative criteria for determining whether to issue funding to eligible organizations providing transition services to members of the Armed Forces who are separated, retired, or discharged, as well as their spouses.

*Alternatives:* VA discussed how to implement provisions of 4304 of Public Law 116–315. A rulemaking is the preferred option as VA grant programs have historically been established utilizing the rulemaking process. If this regulation were not enacted, VA would struggle to implement the mandates put forth in Public Law 116–315 with current available resources and therefore, the agency would not be in compliance with the law. Alternatively, participants would continue to access existing transition services that may limit services to Veterans as defined in 38 U.S.C. 101(2). VA also considered an alternative title to this rulemaking, however after discussions with external partners it was determined to include the term spouse in the title. VSTAGP intends to provide transition services to members of the Armed Forces who are separated, retired, or discharged from the Armed Forces, and spouses of such members, by identifying employment barriers and developing individualized employment plans to overcome barriers. The program will also link participants to necessary support services. Also, a rulemaking will notify the public and interested parties of VA’s new authority and allow for notice and comment. Public Law 116–315 requires grant recipients to provide matching funding from non-Federal sources that are at least equal to Federal grant funds awarded by VA.

*Anticipated Cost and Benefits:* Each year, approximately 200,000 men and women leave the U.S. military service and return to their lives as civilians, a process known as the military-to-civilian transition. This rulemaking benefits former Service members who are discharged, retired, or separated, and their spouses (referred to as

participants), by establishing a grants program focused on improving transition services. Transition services would include resume assistance, interview training, job recruitment training and related services that would result in a successful transition as determined by the Secretary. Related services would include, but are not limited to, employment placement services, employment education and/or training and employment referrals. VA has determined there are costs and transfers associated with this rulemaking. The total regulatory budget impact associated with this rulemaking is estimated to be \$6.9 million in FY 2024 and \$38.3 million over 5 years as reflected in Table 1 below. Costs associated with this rulemaking are estimated at \$1.9 million in FY 2024 and \$13.3 million over 5 years to include an information technology (IT) solution to manage grants. The net transfers for the creation of VSTAGP are \$5 million for FY 2024 and \$25 million over 5 years.

*Risks:* None.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/05/23	88 FR 42891
NPRM Comment Period End.	08/04/23	
Final Action .....	11/00/23	

#### *Regulatory Flexibility Analysis*

*Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*URL For More Information:*

[www.regulations.gov](http://www.regulations.gov).

*Agency Contact:* Kenneth Fenner, Program Analyst, Office of Outreach, Transition and Economic Dev., Department of Veterans Affairs, 1800 G Street SW, Washington, DC 20420, Phone: 800 877-8339, Email: [kenneth.fenner@va.gov](mailto:kenneth.fenner@va.gov).

*RIN:* 2900-AR68

## VA

### **187. Reevaluation of Claims for Dependency and Indemnity Compensation Based on Public Law 117-168 [2900-AR76]**

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 38 U.S.C. 501; 38 U.S.C. 1305

*CFR Citation:* 38 CFR 3.817.

*Legal Deadline:* None.

*Abstract:* The Department of Veterans Affairs (VA) amending its adjudication regulations concerning certain awards of Dependency and Indemnity

Compensation (DIC). Relevant claimants will be eligible to elect a reevaluation of certain previously denied DIC determinations pursuant to changes that establish or modify a presumption of service-connection. Any award following reevaluation may be made retroactive to the date of a previously denied claim as if the establishment or modification of the presumption of service-connection had been in effect on the date of the submission of the original claim. With respect to new or initial awards of DIC pending before VA on or after August 10, 2022, VA will utilize the most advantageous effective date amongst 38 CFR 3.114 and 3.400, to potentially grant an award earlier than August 10, 2022, if applicable. Lastly, as the PACT Act is silent with respect to changes in the accrued or substitution process as it relates to the reevaluation of DIC claims, VA will be utilizing the regular processes regarding accrued and substitution benefits contained in 38 U.S.C. 5121 and 5121A. The amendments within this final rulemaking incorporate legislative updates enacted by the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, or the Honoring our PACT Act of 2022 (Pub. L. 117-168) (PACT Act) and will bring federal regulations into conformance with the statutory changes. The amendments in this regulation are in accordance with the President's priorities to address toxic exposure. Also improve service delivery, customer experience, and reduce administrative burdens for those accessing public benefits and services.

*Statement of Need:* The Department of Veterans Affairs has determined the need to amend its regulations, in accordance with 38 U.S.C. 501, to incorporate legislative updates enacted by Section 204 of the Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022 or the Honoring our PACT Act of 2022 (Pub. L. 117-168).

*Summary of Legal Basis:* This amendment to the Dependency and Indemnity Compensation benefit program is authorized by section 204 of Public Law 117-168. VA must publish regulations for matters related to benefits as required by 38 U.S.C. 501(d).

*Alternatives:* VBA has considered an alternative policy to this final rule. VBA could choose not to act at this time and codify a new regulation at a later date. However, this would have a negative effect on VA's effectiveness in processing benefits claims as the current regulations do not align with the updated statutes. This new adjudication regulation is needed to appropriately

determine eligibility to certain VA benefits based on these statutory changes. Therefore, the final rule of adding a new adjudication regulation which will provide relevant claimants the ability to elect a reevaluation of certain previously denied DIC determinations pursuant to changes that establish or modify a presumption of service connection to conform with the statutory changes within the PACT Act is VA's preferred policy approach.

*Anticipated Cost and Benefits:* TBD.

*Risks:* None.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/22/23	88 FR 17166
NPRM Comment Period End.	05/22/23	
Final Action .....	11/00/23	

#### *Regulatory Flexibility Analysis*

*Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*URL For More Information:*

[www.regulations.gov](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: 202 632-8863, Email: [eric.baltimore@va.gov](mailto:eric.baltimore@va.gov).

*RIN:* 2900-AR76

## VA

### Completed Actions

### **188. Presumptive Service Connection for Respiratory Conditions Due to Exposure to Particulate Matter [2900-AR25]**

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*CFR Citation:* 38 CFR 3.319 (new).

*Abstract:* This rulemaking adopts as final, with changes, an interim final rule that amended the Department of Veterans Affairs (VA) adjudication regulations governing presumptive service connection based on presumed exposures to fine particulate matter. The amendment was necessary to provide health care, services, and benefits to Gulf War Veterans who were exposed to fine particulate matter associated with deployment to the Southwest Asia theater of operations, as well as Afghanistan, Syria, Djibouti, and Uzbekistan. The amendment eased the evidentiary burden of Gulf War Veterans who file claims with VA for asthma, rhinitis, and sinusitis, to include rhinosinusitis.

*Statement of Need:* The amendment is necessary, in accordance with 38 U.S.C. 501(a), to provide health care, services, and benefits to Gulf War Veterans who were potentially exposed to fine particulate matter associated with deployment to the Southwest Asia theater of operations, as well as Afghanistan, Syria, Djibouti, and Uzbekistan.

*Summary of Legal Basis:* This rulemaking adopts as final, with changes, an interim final rule that amended the Department of Veterans Affairs (VA) adjudication regulations governing presumptive service connection based on presumed exposures to fine particulate matter. The amendment was necessary to provide health care, services, and benefits to Gulf War Veterans who were exposed to fine particulate matter associated with deployment to the Southwest Asia theater of operations, as well as Afghanistan, Syria, Djibouti, and Uzbekistan. The amendment eased the evidentiary burden of Gulf War Veterans who file claims with VA for asthma, rhinitis, and sinusitis, to include rhinosinusitis.

*Alternatives:* None.

*Anticipated Cost and Benefits:* The intended effect of this amendment is to address the needs and concerns of Gulf War Veterans and service members who have served and continue to serve in these locations as military operations in the Southwest Asia theater of operations have been ongoing from August 1990 until the present time. Neither Congress nor the President has established an end date for the Gulf War. Therefore, to provide immediate health care, services, and benefits to current and future Gulf War Veterans who may be affected by particulate matter due to their military service, VA intends to provide presumptive service connection for the chronic disabilities of asthma, rhinitis, and sinusitis, to include rhinosinusitis, as well as a presumption of exposure to fine, particulate matter. This will ease the evidentiary burden of Gulf War Veterans who file claims with VA for these three conditions, which are among the most commonly claimed respiratory conditions. VA has determined that both transfers and costs are associated with this final rulemaking. The total budgetary impact is estimated to be \$1.5 billion in FY 2023, \$12.4 billion over five years, and \$30.4 billion over 10 years, as detailed in Table 1 below. Transfers are estimated to be \$1.3 billion in 2023, \$11.2 billion over five years, and \$28.5 billion over 10 years.

*Risks:* TBD.

*Completed:*

Reason	Date	FR Cite
Final Action ..... Final Action Effective.	09/01/23 10/31/23	88 FR 60336

*Regulatory Flexibility Analysis Required:* No.  
*Small Entities Affected:* No.  
*Government Levels Affected:* None.  
*Agency Contact:* Jane Allen, Policy Analyst, Robert Parks, Chief, Part 3 Regulations Staff (211), Department of Veterans Affairs, Compensation Service (21C), 810 Vermont Avenue NW, Washington, DC 20420, *Phone:* 202 461-9700.  
*RIN:* 2900-AR25

**VA**  
**189. Presumptive Service Connection for Rare Respiratory Cancers Due to Exposure to Fine Particulate Matter [2900-AR44]**

*Priority:* Other Significant.  
*CFR Citation:* 38 CFR 3.317(e)(2); 38 CFR 3.  
*Abstract:* This rulemaking adopts as final, without changes, an interim final rule amending the Department of Veterans Affairs (VA) adjudication regulations to establish presumptive service connection for nine rare respiratory cancers in association with presumed exposure to fine particulate matter. These presumptions apply to Veterans with a qualifying period of service, *i.e.*, who served on active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War (hereinafter Gulf War), from August 2, 1990, onward, as well as in Afghanistan, Syria, Djibouti, or Uzbekistan, on or after September 19, 2001, during the Gulf War. This rulemaking implements a decision by the Secretary of Veterans Affairs that determined there is sufficient evidence to support these cancers as presumptive based on exposure to fine particulate matter during service in the Southwest Asia theater of operations, Afghanistan, Syria, Djibouti, or Uzbekistan during certain periods and the subsequent development of the following rare respiratory cancers: squamous cell carcinoma (SCC) of the larynx, SCC of the trachea, adenocarcinoma of the trachea, salivary gland-type tumors of the trachea, adenosquamous carcinoma of the lung, large cell carcinoma of the lung, salivary gland-type tumors of the lung, sarcomatoid carcinoma of the lung, and typical and atypical carcinoid of the lung. The intended effect of this rulemaking is to ease the evidentiary

burden of this population of Veterans who file claims with VA for these nine rare respiratory cancers.  
*Statement of Need:* The Department of Veterans Affairs (VA) is issuing this final rule to amend its adjudication regulations to establish presumptive service connection for nine rare respiratory cancers in association with presumed exposures to fine particulate matter. This amendment is necessary to implement a decision of the Secretary of Veterans Affairs that there is a plausible relationship between service in the Southwest theater of operations, Afghanistan, Syria, Djibouti, or Uzbekistan during certain periods and the subsequent development of the following rare respiratory cancers: squamous cell carcinoma (SCC) of larynx, SCC of trachea, adenocarcinoma of trachea, salivary gland-type tumors of trachea, adenosquamous carcinoma of lung, large cell carcinoma of lung, salivary gland-type tumors of lung, sarcomatoid carcinoma of lung, and typical and atypical carcinoid of the lung. The intended effect of this amendment is to ease the evidentiary burden of Gulf War Veterans who file claims with VA for these nine rare respiratory cancers.  
*Summary of Legal Basis:* VA amends its adjudication regulations to establish presumptive service connection for nine rare respiratory cancers in association with presumed exposures to PM<sub>2.5</sub> for certain Veterans. This amendment is necessary to implement a decision of the Secretary of Veterans Affairs that there is a plausible relationship between service in the Southwest Asia theater of operations, Afghanistan, Syria, Djibouti, or Uzbekistan during certain periods and the subsequent development of the following rare respiratory cancers: squamous cell carcinoma (SCC) of the larynx, SCC of the trachea, adenocarcinoma of the trachea, salivary gland-type tumors of the trachea, adenosquamous carcinoma of the lung, large cell carcinoma of the lung, salivary gland-type tumors of the lung, sarcomatoid carcinoma of the lung, and typical and atypical carcinoid of the lung. The intended effect of this rulemaking is to ease the evidentiary burden of this population of Veterans who file claims with VA for these nine rare respiratory cancers.  
*Alternatives:* None.  
*Anticipated Cost and Benefits:* This rulemaking allows VA to provide access to immediate health care services and benefits such as disability compensation and life insurance to current and future Gulf War Veterans who may be affected by fine particulate matter due to their military service, and to ease the

evidentiary burden of Gulf War Veterans who file claims with VA for these nine rare respiratory cancers. This rulemaking will also provide access to benefits such as health care, survivor compensation, and burial benefits to eligible survivors.

VA has determined that both transfers and costs are associated with this rulemaking. Transfers are estimated to be \$54.2 million in 2023, \$301.1 million over five years, and \$704.6 million over ten years. Costs are estimated to be \$3.9 million in 2023, \$16.8 million over five years, and \$35.2 million over ten years. The total budgetary impact is estimated to be \$58.1 million in 2023, \$317.9 million over five years, and \$739.9 million over ten years.

*Risks:* None.

*Completed:*

Reason	Date	FR Cite
Final Rule .....	11/03/23	88 FR 75498
Final Rule Effective.	11/03/23	

#### *Regulatory Flexibility Analysis*

*Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* None.

*Agency Contact:* Robert Parks,  
Department of Veterans Affairs, 1800 G  
Street NW, Washington, DC 20006,  
*Phone:* 202 461-9700, *Email:*  
*robert.parks3@va.gov.*

*RIN:* 2900-AR44

**BILLING CODE** 8320-01-P

## **CORPORATION FOR NATIONAL AND COMMUNITY SERVICE (AMERICORPS)**

### **Fall 2023 Statement of Regulatory Priorities**

#### **Overview**

The Corporation for National and Community Service, operating as AmeriCorps, is the Federal agency for national service and volunteerism. AmeriCorps provides opportunities for individuals to address some 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, the Volunteer Generation Fund, and AmeriCorps Seniors RSVP, Foster Grandparents, Senior Companions and Senior Demonstration programs. AmeriCorps also supports volunteerism through the national 9/11 Day of Service and Martin Luther King, Jr., Day of

Service. AmeriCorps' authorizing statutes and regulations provide the necessary legal framework for its programs. AmeriCorps' regulatory priorities are guided by its Strategic Plan (available at [americorps.gov/about/agency-overview/strategic-plan](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.

Among other objectives, AmeriCorps' Strategic Plan establishes a goal of partnering with communities to alleviate poverty and advance racial equity. This past year, AmeriCorps finalized updates to its AmeriCorps VISTA regulations (3045-AA79) in support of this goal. The AmeriCorps VISTA program promotes economic resilience and address persistent poverty by encouraging and enabling persons from all walks of life to perform volunteer service to assist in the solution of poverty and poverty-related problems and secure and increase opportunities for self-advancement by persons affected by such problems. Recently finalized updates to VISTA's regulations add programmatic and grantmaking flexibilities to better reach underserved communities, reduce barriers to participation in national service, and provide those communities with access to the benefits of service to reduce poverty.

AmeriCorps is planning two proposed regulatory actions in further support of partnering with communities to alleviate poverty and advance racial equity:

First, AmeriCorps State and National Updates (3045-AA84) will consider additional programmatic and grantmaking flexibilities, including waivers and exceptions for individuals who may benefit from additional education and training, such as those reentering society after a period of incarceration, to participate in national service while acquiring skills and knowledge to ease their transition into the workplace.

And second, AmeriCorps Seniors Updates (3045-AA81) will consider removing barriers to service for individuals, particularly for low-income individuals, and increasing flexibility for sponsors to determine the best mix of staffing and resources to accomplish project goals.

**BILLING CODE** 6050-28-P

## **ENVIRONMENTAL PROTECTION AGENCY (EPA)**

### **Statement of Priorities**

#### **Overview**

EPA works to ensure that all Americans are protected from significant risks to human health and the environment, including climate change, and that overburdened and underserved communities and vulnerable individuals—in particular, communities with environmental justice concerns—are meaningfully engaged and benefit from focused efforts to protect their communities from pollution. EPA acts to ensure that all efforts to reduce environmental harms are based on the best available scientific information, that federal laws protecting human health and the environment are enforced equitably and effectively, and that the United States plays a leadership role in working with other nations to protect the global environment. EPA is committed to environmental protection that builds and supports more diverse, equitable, sustainable, resilient, and productive communities and ecosystems.

By taking advantage of the latest science, the newest technologies and the most cost-effective and sustainable solutions, EPA and its federal, tribal, state, local, and community partners have made important progress in addressing pollution where people live, work, play, and learn. By cleaning up contaminated waste sites, reducing greenhouse gases, lowering emissions of mercury and other air pollutants, and investing in water and wastewater treatment, EPA's efforts have resulted in tangible benefits to the American public. Efforts to reduce air pollution alone have produced hundreds of billions of dollars in benefits in the United States, and tremendous progress has been made in cleaning up our nation's land and waterways. But much more needs to be done to implement the nation's environmental statutes and ensure that all individuals and communities benefit from EPA's efforts to protect human health and the environment and to address the climate crisis.

EPA will use its regulatory authorities, along with grant- and incentive-based programs, technical and compliance assistance, and research and educational initiatives, to address the following priorities set forth in EPA's Strategic Plan:

- Tackle the Climate Crisis
- Take Decisive Action to Advance Environmental Justice and Civil Rights

- Enforce Environmental Laws and Ensure Compliance
- Ensure Clean and Healthy Air for All Communities
- Ensure Clean and Healthy Water for All Communities
- Safeguard and Revitalize Communities
- Ensure Safety of Chemicals for People and the Environment

As EPA develops regulations, we seek to increase participation and engagement of members of the public affected by our regulations, including in the development of our regulatory priorities. In our Regulatory Plan we detail engagement efforts that have helped to inform our priorities to date, as well as future engagement efforts we have planned. Throughout our engagement, EPA would particularly like to hear from members of the public who have not typically participated in the regulatory process, including families and communities affected by climate change, rural workers, and others.

All this work will be undertaken with a strong commitment to scientific integrity, the rule of law and transparency, the health of children and other vulnerable populations, and with special focus on supporting and achieving environmental justice at federal, tribal, state, and local levels.

### Highlights of EPA's Regulatory Plan

This Regulatory Plan highlights our most important upcoming regulatory actions. As always, our Semiannual Regulatory Agenda contains information on a broader spectrum of EPA's upcoming regulatory actions.

#### *Tackle the Climate Crisis*

EPA is taking appropriate regulatory action under existing statutory authorities to reduce emissions from our nation's largest sources of greenhouse gases (GHG) to respond to the severe and urgent threat of climate change. The impacts of climate change are affecting people in every region of the country, threatening lives and livelihoods and damaging infrastructure, ecosystems, and social systems. Overburdened and underserved communities and individuals are particularly vulnerable to these impacts, including low-income communities and communities of color, children, the elderly, tribes, and indigenous people.

Exercising its authority under the Clean Air Act (CAA), EPA will address major sources of GHGs that are driving these impacts by taking regulatory action to minimize emissions of methane from new and existing sources in the oil and natural gas sector; reduce

GHGs from new and existing fossil fuel-fired power plants; and limit GHGs from new light-duty vehicles and heavy-duty trucks. EPA will also carry out the mandates of the American Innovation and Manufacturing (AIM) Act to implement, and where appropriate accelerate, a national phasedown in the production and consumption of hydrofluorocarbons (HFCs), which are highly potent GHGs. Further, these regulatory priorities complement the commitment to holistically and aggressively combat damaging climate pollution while supporting the creation of good jobs and lowering energy costs for families together with implementation of relevant climate provisions of the Inflation Reduction Act.

#### *• New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review.*

On November 15, 2021, the EPA proposed new source performance standards and emission guidelines for crude oil and natural gas facilities that would secure major climate and health benefits for all Americans by reducing emissions of methane and other harmful air pollution from both new and existing sources in the oil and natural gas industry. (86 FR 63110). This action was in response to the January 20, 2021, Executive Order titled 'Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.' The 2021 action proposed to update and strengthen methane and VOC standards on the books for new sources, add standards for currently unregulated new sources, and establish the first nationwide Emission Guidelines for states to regulate existing sources. On December 6, 2022, EPA issued a supplemental proposal to update, strengthen and expand its November 2021 proposal (87 FR 74702). The supplemental proposal would achieve more comprehensive emissions reductions from oil and natural gas operations by improving standards in the 2021 proposal and adding proposed requirements for sources not previously covered. Specific proposed requirements include fugitive emissions monitoring and repair at well sites, stronger requirements for flares, zero emissions standards for pneumatic pumps, new standards for dry seal compressors, and a program to allow approved third parties to identify super-emitting events for prompt mitigation. The supplemental proposal also promotes innovation in methane detection technology by allowing for the use of advanced methane detection systems. The proposal included details

for implementing the Emissions Guidelines. EPA received more than 515,000 public comments on the 2022 supplemental proposal, in addition to 470,000 comments received on the 2021 proposal. EPA held multi-day virtual public hearings on both proposals and has conducted numerous trainings and webinars for communities, members of Tribal Nations, tribal environmental professionals and small businesses. The Agency expects to issue a final rule later this year.

#### *• NSPS for GHG Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired EGUs; Emission Guidelines for GHG Emissions from Existing Fossil Fuel-Fired EGUs; and Repeal of the ACE Rule.*

Fossil fuel-fired electric generating units (EGUs) are the nation's second largest source of greenhouse gas (GHG) pollution. In May 2023, EPA proposed to set limits for new gas-fired combustion turbines, existing coal, oil and gas-fired steam generating units, and certain existing gas-fired combustion turbines. Consistent with EPA's traditional approach to establishing pollution standards for power plants under section 111 of the Clean Air Act, the proposed standards are based on technologies such as carbon capture and sequestration/storage (CCS), low-GHG hydrogen co-firing, and natural gas co-firing, which can be applied directly to power plants that use fossil fuels to generate electricity. As laid out in section 111 of the Clean Air Act, the proposed new source performance standards (NSPS) and emission guidelines reflect the application of the best system of emission reduction (BSER) that, taking into account costs, energy requirements, and other statutory factors, is adequately demonstrated for the purpose of improving the emissions performance of the covered electric generating units. The comment period for the proposed rule concluded on August 8, 2023. EPA intends to issue a final rule in spring 2024.

#### *• Management of Certain Hydrofluorocarbons and Substitutes under Subsection (h) of the American Innovation and Manufacturing Act of 2020.*

This proposed rulemaking would establish requirements for the management of certain HFCs and their substitutes under subsection (h) of the AIM Act. Specifically, this proposal considers provisions to control, where appropriate, practices, processes, or activities regarding the servicing, repair, disposal, or installation of equipment, for the purposes of maximizing the reclamation and minimizing the release



of certain HFCs from equipment and ensuring the safety of technicians and consumers. Among other provisions, EPA is proposing emissions reduction requirements for certain equipment containing HFCs and their substitutes as well as requirements to increase the reclaiming of HFCs.

- *Application-Specific Review and Renewal Rule.*

The AIM Act identifies six applications that are to receive “the full quantity of [HFC] allowances necessary, based on projected, current, and historical trends,” under the allowance allocation program through the end of 2025. The six applications are a propellant in metered dose inhalers, defense sprays, structural composite preformed polyurethane foam for marine use and trailer use, the etching of semiconductor material or wafers and the cleaning of chemical vapor deposition chambers within the semiconductor manufacturing sector, mission-critical military end uses, and onboard aerospace fire suppression. EPA can renew this status for up to five years at a time based on statutory criteria outlined in the AIM Act. This proposed rule will review and consider whether to renew eligibility for each of the six applications, consistent with this statutory process under AIM subsection (e)(4)(B). Additionally, EPA intends to establish how it will review eligibility if petitioned for inclusion of additional applications and to consider revisions to existing regulatory requirements.

- *Greenhouse Gas Emissions Standards for Heavy-Duty Engines and Vehicles—Phase 3.*

• Transportation is the largest source of GHG emissions in the United States and heavy-duty (HD) vehicles are the second-largest contributor in the sector. GHG emissions have significant impacts on public health and welfare as evidenced by the well-documented scientific record and as set forth in EPA’s Endangerment and Cause or Contribute Findings under section 202(a) of the CAA. GHG reductions would benefit all U.S. residents, including populations such as people of color, low-income populations, indigenous peoples, and/or children that may be especially vulnerable to various forms of damages associated with climate change. On April 12, 2023, EPA announced a proposal for more stringent standards to reduce greenhouse gas emissions from HD vehicles beginning in model year (MY) 2027. The new standards would be applicable to HD vocational vehicles (such as delivery trucks, refuse haulers, public utility trucks, transit, shuttle, school buses, etc.) and tractors (such as

day cabs and sleeper cabs on tractor-trailer trucks). Specifically, EPA proposed stronger CO<sub>2</sub> standards for MY 2027 HD vehicles that go beyond the current standards that apply under the HD Phase 2 Greenhouse Gas program. EPA also proposed an additional set of CO<sub>2</sub> standards for HD vehicles that would begin to apply in MY 2028, with progressively more stringent standards each model year through 2032. This proposed “Phase 3” greenhouse gas program maintains the flexible structure created in EPA’s Phase 2 greenhouse gas program, which is designed to reflect the diverse nature of the heavy-duty industry. EPA has conducted outreach with a wide range of interested stakeholders to gather input which we have considered in developing this proposal, and we will continue to engage with the public and all interested stakeholders as part of our regulatory development process.

- *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles.*

On April 12, 2023, EPA announced a proposal for new, more ambitious multipollutant emissions standards to further reduce harmful air pollutant emissions from light-duty passenger cars and light trucks and Class 2b and 3 vehicles (“medium-duty vehicles” or MDVs) under its authority in section 202(a) of the Clean Air Act (CAA), 42 U.S.C. 7521(a), starting with model year 2027. The proposal builds upon EPA’s final standards for federal greenhouse gas emissions standards for passenger cars and light trucks for model years 2023 through 2026 and leverages advances in clean car technology which would result in significant benefits to Americans ranging from reducing climate pollution, to improving public health, to saving drivers money through reduced fuel and maintenance costs. The proposed standards phased in over model years 2027 through 2032. EPA conducted outreach with a wide range of interested stakeholders to gather input which was considered in developing the proposal and will continue to engage with the public and all interested stakeholders as part of our regulatory development process as we develop the final rule.

- *Ensure Clean and Healthy Air for All Communities*

• All people regardless of race, ethnicity, national origin, or income deserve to breathe clean air. EPA has the responsibility to protect the health of vulnerable and sensitive populations, such as children, the elderly, and persons overburdened by pollution or

adversely affected by persistent poverty or inequality. Since enactment of the CAA, EPA has made significant progress in reducing harmful air pollution even as the U.S. population and economy have grown. Between 1970 and 2022, the combined emissions of six key pollutants dropped by 78%, while the U.S. economy remained strong as GDP grew 304% over that time period. As required by the CAA, EPA will continue to build on this progress and work to ensure clean air for all Americans, including those in underserved and overburdened communities. Among other things, EPA will take regulatory action to review and implement health-based air quality standards for criteria pollutants such as particulate matter (PM); limit emissions of harmful air pollution from both stationary and mobile sources; address sources of hazardous air pollution (HAP), such as ethylene oxide, that disproportionately affect communities with environmental justice concerns; and protect downwind communities from linked sources of air pollution that cross state lines. Along with the full set of CAA actions listed in the regulatory agenda, the following high priority actions will allow EPA to continue its progress in reducing harmful air pollution.

- *National Ambient Air Quality Standards for Particulate Matter Reconsideration (PM NAAQS Reconsideration).*

Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria for the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every 5 years. On December 18, 2020, the EPA published a final decision retaining the NAAQS for particulate matter (PM), which was the subject of several petitions for reconsideration as well as petitions for judicial review. As directed in Executive Order 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” signed by President Biden on January 20, 2021, EPA is undertaking a reconsideration of the December 2020 decision to retain the PM NAAQS because the available scientific evidence and technical information indicate that the current standards may not be adequate to protect public health and welfare, as required by the Clean Air Act. As part of this reconsideration, EPA developed a Supplement to the 2019 PM Integrated Science Assessment (ISA) and a Policy Assessment to take into account the most up-to-date science on public health impacts of PM and engaged with the chartered Clean Air Scientific

Advisory Committee (CASAC) and a newly constituted expert CASAC PM panel. The notice of proposed rulemaking was signed on January 5, 2023. The EPA proposed to revise the primary annual PM<sub>2.5</sub> standard from its current level of 12.0 µg/m<sup>3</sup> to within the range of 9.0 to 10.0 µg/m<sup>3</sup>, while proposing to retain the primary 24-hour PM<sub>2.5</sub> standard, the primary 24-hour PM<sub>10</sub> standard, and the secondary PM standards. The EPA also proposed revisions to the Air Quality Index (AQI) and to the PM<sub>2.5</sub> monitoring network. The EPA held a public hearing in February 2023, where more than 300 individuals provided oral testimony. The EPA also received more than 700,000 written public comments from individuals, environmental and public health organizations, industries, federal, state, and local representatives, and tribes and tribal groups. The EPA has also provided other opportunities for public engagement throughout the reconsideration, including public meetings of the CASAC, and tribal consultation offers and informational meetings. EPA intends to issue a final rule in fall 2023.

- *Review of the Secondary National Ambient Air Quality Standards for Ecological Effects of Oxides of Nitrogen, Oxides of Sulfur and Particulate Matter (Ecological Effects of NO<sub>x</sub>, SO<sub>x</sub> and PM Secondary NAAQS Review).*

Under the Clean Air Act, the EPA is required to review and, if appropriate, revise the air quality criteria and national ambient air quality standards (NAAQS) every 5 years. On April 3, 2012, the EPA published a final rule in which the Agency determined to retain the current secondary standards (welfare-based) for nitrogen oxides (NO<sub>x</sub>) and for sulfur oxides (SO<sub>x</sub>). On January 15, 2013, the EPA published a final rule in which the Agency retained the secondary standards for particulate matter. The current review of the air quality criteria and secondary standards for ecological effects of SO<sub>x</sub>, NO<sub>x</sub> and particulate matter includes the preparation of an Integrated Science Assessment and a Policy Assessment by the EPA, with opportunities for review by the EPA's Clean Air Scientific Advisory Committee (CASAC) and the public. These documents will inform the Administrator's proposed decision as to whether to retain or revise the standards. The proposed decision would be published in the **Federal Register** with opportunity provided for public comment. The Administrator's final decisions would take into consideration these documents, CASAC advice, and public comment on the proposed decision. Opportunities for

public engagement and sharing of information concerning this NAAQS review will include public hearings, tribal consultation, informational meetings, and through the CASAC public meetings.

- *NESHAP: Coal and Oil-Fired Electric Utility Steam Generating Units-Review of the Residual Risk and Technology Review.*

- On February 16, 2012, EPA promulgated National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-fired Electric Utility Steam Generating Units (77 FR 9304). The rule (40 CFR part 63, subpart UUUUU), commonly referred to as the Mercury and Air Toxics Standards (MATS), includes standards to control hazardous air pollutant (HAP) emissions from new and existing coal- and oil-fired electric utility steam generating units (EGUs) located at both major and area sources of HAP emissions. There have been several regulatory actions regarding MATS since February 2012, including a May 22, 2020, action that withdrew EPA's threshold finding that it is appropriate and necessary to regulate hazardous air pollution from power plants under section 112 of the CAA, and finalized the residual risk and technology review (RTR) conducted for the Coal- and Oil-Fired EGU source category regulated under MATS (85 FR 31286). As directed by Executive Order 13990, EPA has reviewed the May 2020 final action. After this review, based on the best available science, EPA issued a final action on February 15, 2023, that reinstated the Agency's appropriate and necessary finding for MATS. Following a review of the RTR portion of the May 2020 final action, EPA also proposed to update and strengthen the MATS on April 24, 2023 (88 FR 24854). (88 FR 13956). The proposal reflects feedback EPA received from representatives from local and state governments, industry groups, and environmental organizations. Additional public input will inform EPA as the final regulation is developed. For example, the Agency held a virtual public hearing on May 9, 2023, where 93 speakers provided oral testimony. EPA also participated in a National Tribal Air Association/EPA Air Policy Update Call on May 25, 2023, to inform attendees about the rule and how to submit comments to the docket. Written comments were accepted during the 60-day comment period until June 23, 2023. EPA intends to issue a final rule addressing the RTR in 2024.

- *National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations.*

In this action, EPA is conducting the second residual risk and technology review for the National Emission Standards for Hazardous Air Pollutants for ethylene oxide commercial sterilizers and considering potential updates to the rule. The proposed rule was published in April 2023 (88 FR 22790). If finalized as proposed, the rule would reduce ethylene oxide emissions by 80% and would reduce lifetime cancer risk in all impacted communities to acceptable levels, many of which have environmental justice concerns. Prior to proposal, EPA issued an advance notice of proposed rulemaking that solicited comment from stakeholders, undertook a Small Business Advocacy Review panel, which is needed when there is the potential for significant economic impacts to small businesses from any regulatory actions being considered, and conducted outreach meetings within the communities affected by the highest-risk facilities as well as engagement with state and local governments. The comment period for this proposal concluded on June 27, 2023, and EPA intends to issue a final rule by March 2024.

- *Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act.*

In 2019, EPA issued a proposed rule that would allow major sources of hazardous air pollutants (HAP) subject to National Emissions Standards for Hazardous Air Pollutants (NESHAP) to reclassify to area source status by taking limits on their potential to emit such that they are no longer subject to major source NESHAP. The final rule, *Reclassification of Major Sources as Area Sources Under section 112 of the Clean Air Act (Major MACT to Area-MM2A final rule)*, was promulgated on November 19, 2020. (See 85 FR 73854) The MM2A final rule became effective on January 19, 2021. As directed by Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," EPA has reviewed the MM2A action and published for comment a notice of proposed rulemaking to determine whether changes are necessary for sources seeking to reclassify from major source status to area source status. This proposal reflects engagement with state and local agencies, representatives of communities, and other stakeholders.

- *Revisions to the Air Emission Reporting Requirements (AERR).*

On August 8, 2023 (88 FR 54118), the EPA proposed revisions to the Air Emissions Reporting Requirements in 40

CFR part 51, subpart A. The existing AERR rule was last revised on February 19, 2015 (80 FR 8787). EPA is proposing new requirements to improve the quality and completeness of HAP emissions data from stationary sources and all pollutant emissions from prescribed fires. Specifically, the EPA is proposing to require certain sources report information regarding emission of hazardous air pollutants (HAP); certain sources to report criteria air pollutants, their precursors and HAP; and to require State, local, and certain tribal air agencies to report prescribed fire data. Further, EPA is considering how best to quantify emissions from intermittent sources such as backup generators; how to obtain data from permitted facilities in Indian Country when a Tribe is not required to report emissions data; and how to address known data gaps, streamline processes, and improve data quality, documentation, and transparency for nonpoint and mobile sources. The proposed revisions also include changes for reporting data on airports, rail yards, commercial marine vessels, locomotives, and nonpoint sources. This proposed action would allow for EPA to annually collect (starting in 2027), hazardous air pollutant (HAP) emissions data for point sources in addition to continuing the criteria air pollutant and precursor (CAP) collection in place under the existing AERR. The proposed amendments would ensure that EPA has sufficient information to identify and solve air quality and exposure problems and ensure that communities have the data needed to understand significant environmental risks that may be impacting them.

- *NSPS for the Synthetic Organic Chemical Manufacturing Industry and NESHAP for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry.*

This action will address the agency's technology review under Clean Air Act (CAA) section 112(d)(6) of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for four subparts in 40 CFR part 63 (subparts F, G, H, and I) which are commonly referred to together as the Hazardous Organic NESHAP (HON) and that apply to the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and to equipment leaks from certain non-SOCMI processes. This action will also address the agency's technology review of the NESHAP for two subparts in 40 CFR part 63 (subparts U and W) that apply to the Group I and Group II Polymers and Resins industries. The HON standards were most recently

updated when the agency conducted a residual risk and technology review (RTR) on December 21, 2006. Similarly, the Group I and II Polymers and Resins NESHAP were most recently updated when the agency conducted its RTR on December 16, 2008, and April 21, 2011. The HON and Group I and II Polymers and Resins NESHAP contain maximum achievable control technology (MACT) standards for controlling emissions of hazardous air pollutants (HAP) from process vents, storage vessels, transfer operations, heat exchange systems, wastewater streams, and equipment leaks. The HAP emitted from these emission sources include, but are not limited to, ethylene oxide, benzene, 1,3-butadiene, vinyl chloride, ethylene dichloride, methanol, hexane, toluene, xylenes, and chloroprene.

The agency also plans to consider risks from the SOCMI source category and from the Neoprene Production source category in the Group I Polymers and Resins NESHAP during its technology review and to ensure the standards continue to provide an ample margin of safety to protect public health. Lastly, this action will also address the agency's review, under CAA section 111(b)(1)(B), of four New Source Performance Standards (NSPS) in 40 CFR part 60 (subparts III, NNN, RRR, and VVa) for emissions of Volatile Organic Compound (VOC) from SOCMI air oxidation unit processes, SOCMI distillation operations, SOCMI reactor processes, and equipment leaks located at SOCMI sources. These subparts were originally promulgated pursuant to section 111(b) of the CAA on June 29, 1990 (subparts III and NNN), August 31, 1993 (subpart RRR), and November 16, 2007 (subpart VVa). On April 25, 2023, the EPA published a proposed rulemaking in the **Federal Register** (see 88 FR 25080) for this action. In addition, the EPA has conducted public outreach activities, including hosting an informational webinar on April 13, 2023, and holding a public hearing on the proposed rulemaking on May 16, 2023. EPA intends to publish the final action by March 2024.

#### *Ensure Clean and Healthy Water for All Communities*

The Nation's water resources are the lifeblood of our communities, supporting our health, economy, and way of life. Clean and safe water is a vital resource that is essential to the protection of human health. EPA is committed to ensuring clean and safe water for all, including low-income communities and communities of color, children, the elderly, tribes, and indigenous people. Since the enactment

of the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA), EPA and its state and tribal partners have made significant progress toward improving the quality of our waters and ensuring a safe drinking water supply. Along with the full set of water actions listed in the regulatory agenda, the regulatory initiatives listed below will help ensure that this important progress continues.

- *Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category.*

- On March 29, 2023, EPA published a proposed rule to potentially strengthen the Steam Electric Effluent Limitations Guidelines and Standards (ELGs) (40 CFR 423). EPA previously revised the Steam Electric ELGs in 2015 and 2020. The proposed rule would establish more stringent ELGs for two wastestreams addressed in the 2020 "Steam Electric Reconsideration Rule" (flue gas desulfurization wastewater and bottom ash transport water). In addition, the proposal would establish more stringent effluent limitations and standards for an additional wastestream (combustion residual leachate) and takes comment on potential revisions to limitations and standards for a fourth wastestream (legacy wastewater). The first two wastestreams mentioned above are the subject of current litigation pending in the U.S. Court of Appeals for the Fourth Circuit. *Appalachian Voices, et al. v. EPA*, No. 20–2187 (4th Cir.). The 2015 limitations for combustion residual leachate and legacy wastewater discharged by existing sources were vacated by the U.S. Court of Appeals for the Fifth Circuit in *Southwestern Electric Power Co., et al. v. EPA*, 920 F.3d 999 (5th Cir. 2019). EPA has conducted outreach with Tribal governments, state governments and governmental organizations, and potential communities with environmental justice concerns on this rulemaking.

- *Per- and polyfluoroalkyl substances (PFAS): Perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) National Primary Drinking Water Regulation Rulemaking.*

- On March 3, 2021, EPA published the Fourth Regulatory Determinations (86 FR 12272), including a determination to regulate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) in drinking water. EPA is finalizing a National Primary Drinking Water Regulation (NPDWR) for PFOA, PFOS, and other PFAS as part of this action. EPA proposed the NPDWR for public comment in March 2023. The Agency anticipates issuing a final regulation in

late 2023 after considering public comments on the proposal.

- *National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions.*

EPA promulgated the final Lead and Copper Rule Revision (LCRR) on January 15, 2021, (86 FR 4198) and subsequently reviewed those revisions to further evaluate whether the LCRR fully protected families and communities (86 FR 71574; December 17, 2021) particularly those that have been disproportionately impacted by lead in drinking water. Through this review, the Agency concluded that there are significant opportunities to improve the LCRR. EPA is developing a new proposed NPDWR, the Lead and Copper Rule Improvements (LCRI), to strengthen the regulatory framework and address lead in drinking water. EPA expects to issue the proposed LCRI in Fall 2023. The Agency anticipates issuing a final regulation prior to October 16, 2024, after considering public comments on the proposal.

- *Federal Baseline Water Quality Standards for Indian Reservations.*

On April 27, 2023, the EPA Administrator signed a proposed rule to establish federal baseline water quality standards (WQS) for waters on Indian reservations that do not have WQS under the CWA. This proposed rule would help advance President Biden's commitment to strengthening the nation-to-nation relationships with Indian country. Fifty years after enactment of the CWA, over 80% of Indian reservations do not have this foundational protection expected by Congress as laid out in the CWA for their waters. Addressing this lack of CWA-effective WQS for the waters of more than 250 Indian reservations is a priority for EPA, given that WQS are central to implementing the water quality framework of the CWA. Promulgating baseline WQS would provide more scientific rigor and regulatory certainty to National Pollutant Discharge Elimination System (NPDES) permits for discharges to these waters. Consistent with EPA's regulations, the baseline WQS include designated uses, water quality criteria to protect those uses, and antidegradation policies to protect high quality waters. EPA consulted with tribes in the summer of 2021 during the pre-proposal phase and in the summer of 2023, concurrent with the public comment period associated with the proposal.

- *Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights.*

- Many tribes hold reserved rights to resources on lands and waters where

states establish WQS, through treaties, statutes, or other sources of federal law. The U.S. Constitution defines treaties as the supreme law of the land. On November 28, 2022, the EPA Administrator signed a proposed rule that would, if finalized, revise the federal WQS regulation to ensure that WQS do not impair tribal reserved rights by giving clear direction on how to develop WQS where tribes hold reserved rights. This proposed rule would help EPA ensure protection of resources reserved to tribes in treaties, statutes, or other sources of federal law when establishing, revising, and reviewing WQS. The development of this rule helps advance President Biden's commitment to strengthening the nation-to-nation relationships with tribes. EPA consulted with tribes in the summer of 2021 during the pre-proposal phase and in the winter of 2023, concurrent with the public comment period for the proposed rule. EPA is working to expeditiously finalize the proposed rule, taking into account public comments.

- *Safeguard and Revitalize Communities*

EPA works to improve the health and livelihood of all Americans by cleaning up and returning land to productive use, preventing contamination, and responding to emergencies. EPA collaborates with other federal agencies, industry, states, tribes, and local communities to enhance the livability and economic vitality 15 of neighborhoods. Challenging and complex environmental problems persist at many contaminated properties, including contaminated soil, sediment, surface water, and groundwater that can cause human health concerns. EPA acts under several different statutory authorities, including the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA's regulatory program works to incorporate new technologies and approaches to cleaning up land to provide for an environmentally sustainable future more efficiently and effectively, as well as to strengthen climate resilience and to integrate environmental justice and equitable development when returning sites to productive use. Along with the other land and emergency management actions in the regulatory agenda, EPA will take the following priority actions to address the contamination of soil, sediment, surface water, and groundwater.

- *PFAS: RCRA Listing and CERCLA Designation.*

Based on public health and environmental protection concerns and in response to several petitions which requested EPA to take regulatory action on PFAS under RCRA, EPA is evaluating the existing toxicity and health effects data on four PFAS constituents to determine if they should be listed as RCRA Hazardous Constituents. If the existing data for the four PFAS constituents support listing any or all of these constituents as RCRA hazardous constituents, EPA will propose to list the constituents in a **Federal Register** notice for public comment. The four PFAS chemicals EPA will evaluate are: perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorobutane sulfonic acid (PFBS), hexafluoropropylene oxide dimer acid (HFPO-DA or GenX). EPA has communicated with interested stakeholders about this action and will do conduct additional outreach with the public, organizations, states, tribal groups, and affected parties following publication of a proposed rule.

Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA" or "Superfund"), the Environmental Protection Agency (EPA or the Agency) is moving to finalize the designation of perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS), including their salts and structural isomers, as hazardous substances. CERCLA authorizes the Administrator to promulgate regulations designating as hazardous substances such elements, compounds, mixtures, solutions, and substances which, when released into the environment, may present substantial danger to the public health or welfare or the environment. Such a designation would ultimately facilitate cleanup of contaminated sites and reduce human exposure to these "forever" chemicals.

- *Hazardous and Solid Waste Management System: Addressing Coal Combustion Residues from Electric Utilities.*

On April 17, 2015, the Environmental Protection Agency (EPA or the Agency) promulgated national minimum criteria for existing and new coal combustion residuals (CCR) landfills and existing and new CCR surface impoundments. On August 21, 2018, the D.C. Circuit Court of Appeals issued its opinion in the case of *Utility Solid Waste Activities Group, et al. v. EPA*, which vacated and remanded the provision that exempted inactive impoundments at inactive facilities from the CCR rule. In May 2023, EPA proposed regulations to implement this part of the court

decision for inactive CCR surface impoundments at inactive utilities, or “legacy CCR surface impoundments”. This proposal included adding a new definition for legacy CCR surface impoundments. EPA also proposed to require such legacy CCR surface impoundments to follow existing regulatory requirements for fugitive dust, groundwater monitoring, and closure, or other technical requirements. Finally, EPA proposed requirements for CCR management units including a facility evaluation and to follow existing regulatory requirements for groundwater monitoring, corrective action, and closure for all CCR contamination (regardless of how or when that CCR was placed) at a regulated facility. After reviewing the public comments on the proposed rule, EPA will take final action.

- *Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act, as amended; Safer Communities by Chemical Accident Prevention.*

- On August 31, 2022, the Environmental Protection Agency (EPA) published proposed amendments to its Risk Management Program (RMP) regulations as a result of Agency review. The proposed revisions included several changes and amplifications to the accident prevention program requirements, enhancements to the emergency preparedness requirements, increased public availability of chemical hazard information, and several other changes to certain regulatory definitions or points of clarification. Such amendments seek to improve chemical process safety; assist in planning, preparedness, and responding to RMP-reportable accidents; and improve public awareness of chemical hazards at regulated sources. EPA aims to release the final rule by the end of 2023.

- *Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives.*

- This rulemaking proposes to revise regulations will consider revisions to the regulations that allow for the open burning and detonation (OB/OD) of waste explosives. This allowance or “variance” to the prohibition on the open burning of hazardous waste was established at a time when there were no alternatives to the safe treatment of waste explosives. However, recent findings from the National Academies of Sciences, Engineering, and Medicine and the EPA have determined identified that safe alternatives that are potentially applicable to many energetic/explosive waste streams. Because there are potentially safe alternatives in use today that capture and treat emissions prior to

release, the EPA is considering revising regulations to promote the broader use of these alternatives, where applicable. As part of the rule development process, EPA has held two rounds of engagement with states, territories, tribes, environmental and community groups, and owners/operators of OB/OD units.

- *Definition of Hazardous Waste Applicable to Corrective Action for Solid Waste Management Units* EPA is considering a proposed rule that would modify the regulations at 40 CFR part 264 to clarify that the definition of hazardous waste found in RCRA section 1004(5) is applicable to corrective action for releases from solid waste management units. The proposed rule would codify in regulation EPA’s interpretation of its authority under RCRA section 3004(u) and (v).

- *Hazardous Substance Response Worst Case Discharge Planning.*

The Clean Water Act (CWA) provides that regulations shall be issued “which require an owner or operator of a tank vessel or facility . . . to prepare and submit . . . a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of . . . a hazardous substance.” EPA was sued for failure to fulfill this mandatory duty imposed by Congress. This regulatory action is being conducted under the terms of a consent decree entered into on March 12, 2020, which requires that a proposed action is signed within 24 months of the final agreement and that a final action follow within 30 months of the publication of the proposed rule. Subsequently, the Environmental Protection Agency proposed a regulatory action to require planning for worst case discharges of CWA hazardous substances under section 311(j)(5)(A). EPA plans to promulgate a final rule by Spring 2024 meet the terms of the Consent Decree.

*Ensure Safety of Chemicals for People and the Environment*

EPA is responsible for ensuring the safety of chemicals and pesticides for all people at all life stages. Chemicals and pesticides released into the environment as a result their manufacture, processing, distribution, use, or disposal can threaten human health and the environment. EPA gathers and assesses information about the risks associated with chemicals and pesticides and acts to minimize risks and prevent unreasonable risks to individuals, families, and the environment. EPA acts under several different statutory authorities, including the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Federal Food, Drug and

Cosmetic Act (FFDCA), the Toxic Substances Control Act (TSCA), the Emergency Planning and Community Right-to-Know-Act (EPCRA), and the Pollution Prevention Act (PPA). Using best available science, the Agency will continue to satisfy its overall directives under these authorities and highlights the following rulemakings intended for release in FY2024:

- *Collecting Data to Better Understand the Environmental and Human Health Impacts of Per- and Polyfluoroalkyl Substances (PFAS).*

Building on EPA’s completion of actions identified in the PFAS Strategic Roadmap that the EPA Administrator announced on October 18, 2021, the Agency is considering whether to add PFAS chemicals to the list of chemicals required to report to the Toxics Release Inventory (TRI) Program under EPCRA section 313 in furtherance of section 7321(d) of the National Defense Authorization Act for Fiscal Year 2020 (NDAA), which directs EPA to add any PFAS that EPA determines meet the listing criteria by December 2023.

- *Improving Procedures for Assessing the Risks of New and Existing Chemical Substances under TSCA.*

As amended in 2016, TSCA requires EPA to assess the risks of each new chemical substance for which a notice was received under TSCA section 5(a)(1) of the law and make an affirmative determination on whether such a new chemical substance presents an unreasonable risk to human health or the environment under known, intended or reasonably foreseen conditions of use before the submitter may commence manufacturing or processing of the chemical substance that is the subject of the submitted notice, and to take action as required in association with the determination. On May 26, 2023, EPA proposed to amend the new chemicals procedural regulations in 40 CFR parts 720, 721, 723, and 725 for the purpose of aligning EPA’s processes and procedures with the 2016 TSCA amendments and to clarify and improve the efficiency of the Agency’s review process (RIN 2070–AK65). One of the major objectives of the rulemaking is to reduce the need to redo all or part of the risk assessment for a new chemical by increasing the quality of information initially submitted in new chemicals notices, ensuring that the Agency’s processes result in the timely, effective completion of new chemical risk assessments. Another key objective of the rulemaking is to improve the review process for low volume exemptions (LVEs) and low release and exposure exemptions (LoREXs), which include

requiring EPA approval of an exemption notice prior to commencement of manufacture, making per- and polyfluoroalkyl substances (PFAS) categorically ineligible for these exemptions, and providing that persistent, bioaccumulative, toxic (PBT) chemical substances are also ineligible for these exemptions, consistent with EPA's 1999 PBT policy. EPA expects to promulgate final revisions to the new chemicals procedural regulations in November 2024.

In addition, the 2016 TSCA amendments require EPA to evaluate the safety of existing chemicals via a three-stage process: prioritization, risk evaluation, and risk management. EPA first prioritizes chemicals as either high- or low-priority for risk evaluation. EPA then evaluates high-priority chemicals for unreasonable risk. As a result of litigation challenging the 2017 final rule that established EPA's procedural framework for conducting existing chemical risk evaluations under TSCA, and in consideration of Executive Order 13990, the Agency proposed to amend that framework in order to better align the Agency's processes with the statutory text and structure and Congress' intent in the 2016 amendments to TSCA (RIN 2070-AK90). Key provisions of the proposed rule include clarifications regarding the required scope of risk evaluations, considerations related to peer review, the process for revisiting a completed risk evaluation, requirements for manufacturer-requested risk evaluations and related information-gathering provisions, provisions addressing violations and penalties, and other aspects based on lessons learned in the process of carrying out the first 10 TSCA risk evaluations. EPA expects to promulgate final revisions in April 2024.

- *Addressing the Unreasonable Risk of Existing Chemical Substances under TSCA.*

- Upon determining that an existing chemical presents an unreasonable risk of injury to health or the environment, the Agency must immediately initiate an action to apply, by rule, requirements under TSCA to eliminate the unreasonable risk. EPA may consider a range of risk management options under TSCA in such a rule, including labeling, recordkeeping or notice requirements, actions to reduce human exposure or environmental release, or a ban of the chemical or of certain uses. After determining that the chemical substances present unreasonable risk under their conditions of use, the Agency intends to propose risk management regulations for addressing

the unreasonable risks of 1-bromopropane (RIN 2070-AK73) and n-methylpyrrolidone (RIN 2070-AK85) and promulgate final rules addressing the unreasonable risks of chrysotile asbestos (RIN 2070-AK86), methylene chloride (RIN 2070-AK70), and trichloroethylene (RIN 2070-AK83) by Spring 2024, and to issue final risk management regulations addressing the unreasonable risks of carbon tetrachloride (RIN 2070-AK82) and perchloroethylene (RIN 2070-AK84) in Summer 2024. The Agency has undertaken extensive outreach and consultation efforts throughout the development of these actions. In addition to stakeholder outreach conducted throughout the risk evaluation and risk management rulemaking processes for these chemical substances, EPA also consulted with State, local, and Tribal government officials, and held public environmental justice consultations to further opportunities for underserved and overburdened communities to share information and input with the Agency prior to proposal. When applicable, EPA also convened Small Business Advocacy Review Panels and consulted with small entity representatives as required under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) to provide advice and recommendations to ensure that EPA carefully considers small entity concerns. Further, the Agency has hosted public webinars to brief stakeholders on proposed risk management regulations that have published in the **Federal Register** and to receive additional public input in addition to written public comments submitted to the rulemaking dockets. EPA's chemical risk management efforts reflect the feedback we have received from the various stakeholders and government officials, and the Agency will continue these practices of sharing information and seeking input. For more information about the Agency's public involvement efforts, please visit <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca#meetings> and <https://www.epa.gov/reg-flex/small-business-advocacy-review-sbar-panels>.

- *Reevaluating Changes to the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels under TSCA.*

The Agency's dust-lead hazard standards (DLHS) provide the basis for risk assessors to determine whether dust-lead hazards are present, and apply to target housing (*i.e.*, most pre-1978 housing) and child-occupied facilities (pre-1978 non-residential properties where children 6 years of age or under

spend a significant amount of time such as daycare centers and kindergartens). EPA's dust-lead clearance levels (DLCL) indicate the amount of lead in dust on a surface following the completion of an abatement activity. On July 9, 2019, EPA promulgated a final rule to lower the DLHS, and on January 6, 2021, EPA promulgated a final rule to lower the DLCL. On May 14, 2021, the United States Court of Appeals for the Ninth Circuit issued an opinion to remand without vacatur the 2019 DLHS final rule and directed EPA to reconsider the 2019 DLHS rule in conjunction with a reconsideration of the DLCL. Notably, the Court instructed EPA to consider only health factors when setting the DLHS while affirming that the Agency is able to consider reliability, effectiveness, and safety, including non-health factors such as laboratory capabilities/capacity and achievability, when setting the DLCL. As part of EPA's efforts to reduce childhood lead exposure, and in accordance with the U.S. Court of Appeals for the Ninth Circuit 2021 opinion, EPA proposed on August 1, 2023, to lower the DLHS from 10 micrograms per square foot ( $\mu\text{g}/\text{ft}^2$ ) and 100  $\mu\text{g}/\text{ft}^2$  for floors and window sills to any reportable level as analyzed by a laboratory recognized by EPA's National Lead Laboratory Accreditation Program. EPA also proposed to change the DLCL from 10  $\mu\text{g}/\text{ft}^2$ , 100  $\mu\text{g}/\text{ft}^2$  and 400  $\mu\text{g}/\text{ft}^2$  for floors, windowsills, and window troughs to 3  $\mu\text{g}/\text{ft}^2$ , 20  $\mu\text{g}/\text{ft}^2$ , and 25  $\mu\text{g}/\text{ft}^2$ , respectively. The Agency consulted with State, local and Tribal government officials during the rulemaking. EPA expects to promulgate final revisions to the DLHS and DLCL (RIN 2070-AK91) in October 2024 and will continue its efforts to engage its partners to ensure the successful implementation of the amended hazard standards and clearance levels.

#### *Rules Expected To Affect Small Entities*

By better coordinating small business activities, EPA aims to improve its technical assistance and outreach efforts, minimize burdens to small businesses in its regulations, and simplify small businesses' participation in its voluntary programs. Actions that may affect small entities can be tracked on EPA's Regulatory Flexibility website (<https://www.epa.gov/reg-flex>) at any time.



**EPA—OFFICE OF AIR AND RADIATION (OAR)**

## Proposed Rule Stage

**190. Review of the Secondary National Ambient Air Quality Standards for Ecological Effects of Oxides of Nitrogen, Oxides of Sulfur and Particulate Matter [2060–AS35]**

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

*Legal Authority:* 42 U.S.C. 7401 *et seq.* Clean Air Act

*CFR Citation:* 40 CFR 50.

*Legal Deadline:* None.

*Abstract:* Under the Clean Air Act, the EPA is required to review and, if appropriate, revise the air quality criteria and national ambient air quality standards (NAAQS) every 5 years. On April 3, 2012, the EPA published a final rule in which the Agency determined to retain the current secondary standards (welfare-based) for nitrogen oxides (NO<sub>x</sub>) and for sulfur oxides (SO<sub>x</sub>). On January 15, 2013, the EPA published a final rule in which the Agency retained the secondary standards for particulate matter. The current review of the air quality criteria and secondary standards for ecological effects of SO<sub>x</sub>, NO<sub>x</sub> and particulate matter includes the preparation of an Integrated Science Assessment and a Policy Assessment by the EPA, with opportunities for review by the EPA's Clean Air Scientific Advisory Committee (CASAC) and the public. These documents will inform the Administrator's proposed decision as to whether to retain or revise the standards. The proposed decision would be published in the **Federal Register** with opportunity provided for public comment. The Administrator's final decisions would take into consideration these documents, CASAC advice, and public comment on the proposed decision. Opportunities for public engagement and sharing of information concerning this NAAQS review will include public hearings, tribal consultation, informational meetings, and through the CASAC public meetings.

*Statement of Need:* Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria and national ambient air quality standards (NAAQS) every 5 years. On April 3, 2012, EPA published a final rule retaining the Secondary NAAQS for NO<sub>2</sub> and SO<sub>2</sub>, without revision. On August 29, 2013, EPA announced that it is reviewing the April 2012 decision on the secondary air quality standards for NO<sub>2</sub> and SO<sub>2</sub>. On December 3, 2014,

EPA announced it is reviewing the secondary air quality standards for particulate matter.

*Summary of Legal Basis:* Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria and the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every 5 years.

*Alternatives:* The main alternatives for the Administrator's decision on the review of the secondary national ambient air quality standards for NO<sub>x</sub>, SO<sub>x</sub> and PM include retaining or revising the existing standards.

*Anticipated Cost and Benefits:* When the Agency proposes revisions to the standards, the Agency prepares a Regulatory Impact Analysis (RIA) to provide the public with illustrative estimates of the potential costs and health and welfare benefits of attaining the revised standards. However, the Clean Air Act makes clear that the economic and technical feasibility of attaining standards are not to be considered in setting or revising the NAAQS, although such factors may be considered in the development of state plans to implement the standards.

*Risks:* The review builds on the review of the NO<sub>x</sub> and SO<sub>x</sub> NAAQS, completed in 2012, and includes preparation by EPA of an Integrated Review Plan, an Integrated Science Assessment, and a Policy Assessment, which includes a risk/exposure assessment, with opportunities for review by the EPA's Clean Air Scientific Advisory Committee (CASAC) and the public. The final versions of these documents will inform the Administrator's proposed decisions on whether to revise or retain the Secondary NO<sub>x</sub> SO<sub>x</sub> and PM NAAQS. The Administrator's final decisions on whether to revise or retain the Secondary NO<sub>x</sub> SO<sub>x</sub> and PM NAAQS will take into consideration the scientific evidence and quantitative analyses presented in these documents, CASAC advice, and public comment on the proposed decision.

*Timetable:*

Action	Date	FR Cite
Notice .....	08/22/18	83 FR 42497
Notice .....	05/31/23	88 FR 34852
NPRM .....	04/00/24	

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

*Government Levels Affected:* Undetermined.

*Additional Information:*

*Agency Contact:* Ginger Tennant, Environmental Protection Agency, Office of Air and Radiation 109 T.W. Alexander Drive, Mail Code C504–06, Research Triangle Park, NC 27711, Phone: 919 541–4072, Fax: 919 541–0237, Email: [tennant.ginger@epa.gov](mailto:tennant.ginger@epa.gov).

Karen Wesson, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code C504–06, Research Triangle Park, NC 27711, Phone: 919 541–3515, Email: [wesson.karen@epa.gov](mailto:wesson.karen@epa.gov).

RIN: 2060–AS35

**EPA–OAR****191. NSPS for GHG Emissions From New, Modified, and Reconstructed Fossil Fuel—Fired EGUS; Emission Guidelines for GHG Emissions From Existing Fossil Fuel—Fired EGUS; and Repeal of the ACE RULE [2060–AV09]**

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 42 U.S.C. 7411 Clean Air Act; 42 U.S.C. 7414 and 7601

*CFR Citation:* 40 CFR 60, subpart TTTT; 40 CFR 60 subpart UUUUa.

*Legal Deadline:* None.

*Abstract:* Fossil fuel-fired electric generating units (EGUs) are the nation's second largest source of greenhouse gas (GHG) pollution. In May 2023, EPA proposed to set limits for new gas-fired combustion turbines, existing coal, oil and gas-fired steam generating units, and certain existing gas-fired combustion turbines. Consistent with EPA's traditional approach to establishing pollution standards for power plants under section 111 of the Clean Air Act, the proposed standards are based on technologies such as carbon capture and sequestration/storage (CCS), low-GHG hydrogen co-firing, and natural gas co-firing, which can be applied directly to power plants that use fossil fuels to generate electricity. As laid out in section 111 of the Clean Air Act, the proposed new source performance standards (NSPS) and emission guidelines reflect the application of the best system of emission reduction (BSER) that, taking into account costs, energy requirements, and other statutory factors, is adequately demonstrated for the purpose of improving the emissions performance of the covered electric generating units.

EPA anticipates promulgating final rules by spring 2024.

*Statement of Need:* New EGUs are a significant source of GHG emissions. This action will evaluate options to reduce those emissions.

*Summary of Legal Basis:* Clean Air Act section 111(b) provides the legal



framework for establishing greenhouse gas emission standards for new electric generating units.

**Alternatives:** EPA evaluated several options for reducing GHG emissions from new EGUs including carbon capture and sequestration/storage (CCS), low-GHG hydrogen co-firing, natural gas co-firing, efficient generation, and use of clean fuels.

**Anticipated Cost and Benefits:** Undetermined.

**Risks:** Undetermined.

**Timetable:**

Action	Date	FR Cite
NPRM .....	05/23/23	88 FR 33240
NPRM Comment Period End.	07/24/23	
Supplemental NPRM.	11/20/23	88 FR 80682
Supplemental Comment Period End.	12/20/23	
Final Rule .....	04/00/24	

**Regulatory Flexibility Analysis Required:** Undetermined.

**Government Levels Affected:** Federal, State.

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

**Energy Effects:** Statement of Energy Effects planned as required by Executive Order 13211.

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

**Additional Information:**

**Sectors Affected:** 22111 Electric Power Generation; 22112 Fossil Fuel Electric Power Generation.

**URL For More Information:** <https://www.federalregister.gov/d/2023-10141>.

**Agency Contact:** Lisa Thompson, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code D243-01, Research Triangle Park, NC 27711, Phone: 919 541-9775, Email: [thompson.lisa@epa.gov](mailto:thompson.lisa@epa.gov).

Nick Hutson, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code D243-01, Research Triangle Park, NC 27711, Phone: 919 541-2968, Fax: 919 541-4991, Email: [hutson.nick@epa.gov](mailto:hutson.nick@epa.gov).

**Related RIN:** Related to 2060-AT56

**RIN:** 2060-AV09

## EPA—OAR

### 192. Review of Final Rule Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act [2060-AV20]

**Priority:** Other Significant.

**Legal Authority:** 42 U.S.C. 7401 *et seq.* CAA; 42 U.S.C. 7414; 42 U.S.C. 7601

**CFR Citation:** 40 CFR 63.1.

**Legal Deadline:** None.

**Abstract:** The final rule,

Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act (Major MACT to Area-MM2A final rule), was promulgated on November 19, 2020. (See 85 FR 73854) The MM2A final rule became effective on January 19, 2021. On January 20, 2021, President Biden issued Executive Order 13990 Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. The EPA has identified the MM2A final rule as an action being considered pursuant section (2)(a) of Executive Order 13990. Under this review, EPA, as appropriate and consistent with the Clean Air Act section 112, published for comment a notice of proposed rulemaking reviewing the MM2A final rule. As the Agency developed this proposal, we sought to increase participation and engagement of members of the public affected by this action. The agency held multiple pre-proposal outreach meetings with environmental non-governmental organizations representing communities as well as associations of state/local government agencies.

**Statement of Need:** The EPA issued a notice of proposed rulemaking of EPA's review of the final rule Reclassification of Major Sources as Area Sources Under section 112 of the Clean Air Act (Major MACT to Area-MM2A final rule) pursuant Executive Order 13990. Pursuant section (2)(a) of Executive Order 13990 Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, the EPA is to review the MM2A final rule and as appropriate and consistent with the Clean Air Act section 112, to publish for comment a notice of proposed rulemaking either suspending, revising, or rescinding the MM2A final rule.

**Summary of Legal Basis:** The EPA issued a final rulemaking on November 19, 2020. The final MM2A rule provides that a major source can be reclassified to area source status at any time upon reducing its potential to emit (PTE) hazardous air pollutants (HAP) to below the major source thresholds (MST) of 10 tons per year (tpy) of any single HAP and 25 tpy of any combination of HAP.

Pursuant section (2)(a) of Executive Order 13990 Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, the EPA is to review the MM2A final rule and as appropriate and consistent with the Clean Air Act section 112, to publish for comment a notice of proposed rulemaking either suspending, revising, or rescinding the MM2A final rule.

**Alternatives:** The EPA will take comments on the review of the final MM2A and EPA's proposed rulemaking either suspending, revising, or rescinding the MM2A final rule.

**Anticipated Cost and Benefits:** The proposed action does not have quantified costs or benefits.

**Risks:** The proposed action does not address public health risks.

**Timetable:**

Action	Date	FR Cite
NPRM .....	09/27/23	88 FR 66336
NPRM Comment Period End.	11/13/23	
Final Rule .....	05/00/24	

**Regulatory Flexibility Analysis Required:** Undetermined.

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

**Additional Information:**

**Agency Contact:** Nathan Topham, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code D243-02, Research Triangle Park, NC 27711, Phone: 919 541-0483, Fax: 919 541-4991, Email: [topham.nathan@epa.gov](mailto:topham.nathan@epa.gov).

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**Related RIN:** Related to 2060-AM75  
**RIN:** 2060-AV20

## EPA—OAR

### 193. Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under Subsection (H) of the American Innovation and Manufacturing Act of 2020 [2060-AV84]

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

**Unfunded Mandates:** This action may affect the private sector under Public Law 104-4.

**Legal Authority:** 42 U.S.C. 7675

**CFR Citation:** 40 CFR 84.

**Legal Deadline:** None.

**Abstract:** This proposed rulemaking would establish requirements for the management of certain HFCs and their substitutes under subsection (h) of the AIM Act. Specifically, this proposal considers provisions to control, where appropriate, practices, processes, or activities regarding the servicing, repair, disposal, or installation of equipment, for the purposes of maximizing the reclamation and minimizing the release of certain HFCs from equipment and ensuring the safety of technicians and consumers. Among other provisions, EPA is proposing emissions reduction requirements for certain equipment containing HFCs and their substitutes as well as requirements for the reclaiming of HFCs.

**Statement of Need:** The EPA issued a notice of proposed rulemaking to meet the statutory provisions of subsection (h) of the American Innovation and Manufacturing (AIM) Act of 2020.

**Summary of Legal Basis:** The American Innovation and Manufacturing (AIM) Act, enacted on December 27, 2020, provides EPA new authorities to address hydrofluorocarbons (HFCs) in three main areas: phasing down the production and consumption of listed HFCs, maximizing reclamation and minimizing releases of these HFCs and their substitutes in equipment (e.g., refrigerators and air conditioners), and facilitating the transition to next-generation technologies by restricting the use of HFCs in particular sectors or subsectors. Subsection (h) of the AIM Act requires EPA to establish regulations to control, where appropriate, practices, processes, or activities regarding the servicing, repair, disposal, or installation of equipment, for the purpose of maximizing the reclamation and minimizing the release of certain HFCs from equipment and ensuring the safety of technicians and consumers.

**Alternatives:** In the proposed rule, EPA requested comments on alternative approaches and compliance dates for the various provisions. For example, EPA requested comment on alternative compliance dates for the proposed fire suppression requirements.

**Anticipated Cost and Benefits:** The Agency prepared a Regulatory Impact Analysis (RIA) Addendum. Taking into account both benefits and compliance costs over the 2025–2050 time period, it is estimated that the proposed rule would result in present value net benefit (benefits minus compliance costs), of \$6.1 billion (with compliance costs discounted at three percent).

**Risks:** EPA is still evaluating the scope and risks associated with a prospective rule.

**Timetable:**

Action	Date	FR Cite
Notice .....	10/17/22	87 FR 62843
NPRM .....	10/19/23	88 FR 72216
NPRM Comment Period End.	12/18/23	
Final Rule .....	To Be Determined	

**Regulatory Flexibility Analysis Required:** Undetermined.

**Government Levels Affected:** Federal.

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

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RIN: 2060–AV84

## EPA—OAR

### 194. Phasedown of Hydrofluorocarbons: Review and Renewal of Eligibility for Application—Specific Allowances [2060–AV98]

**Priority:** Other Significant.

**Legal Authority:** American Innovation and Manufacturing (AIM) Act of 2020 (42 U.S.C. 7675)

**CFR Citation:** 40 CFR 84.

**Legal Deadline:** None.

**Abstract:** The AIM Act identifies six applications that are to receive “the full quantity of [HFC] allowances necessary, based on projected, current, and historical trends,” under the allowance allocation program through the end of 2025. The six applications are a propellant in metered dose inhalers, defense sprays, structural composite preformed polyurethane foam for marine use and trailer use, the etching of semiconductor material or wafers and the cleaning of chemical vapor deposition chambers within the semiconductor manufacturing sector, mission-critical military end uses, and onboard aerospace fire suppression. EPA can renew this status for up to five years at a time based on statutory criteria outlined in the AIM Act. This

proposed rule will review and consider whether to renew eligibility for each of the six applications, consistent with this statutory process under AIM subsection (e)(4)(B). Additionally, EPA intends to establish how it will review eligibility if petitioned for inclusion of additional applications and to consider revisions to existing regulatory requirements.

**Statement of Need:** This rule is required to meet the statutory provisions of subsection (e) of the AIM Act.

**Summary of Legal Basis:** The American Innovation and Manufacturing (AIM) Act, enacted on December 27, 2020, provides EPA authority to address hydrofluorocarbons (HFCs) in three main areas: phasing down the production and consumption of listed HFCs, maximizing reclamation and minimizing releases of these HFCs and their substitutes in equipment (e.g., refrigerators and air conditioners), and facilitating the transition to next-generation technologies by restricting the use of HFCs in particular sectors or subsectors. Subsection (e)(iv)(B) requires EPA to allocate the full quantity of allowances necessary for 6 applications. Five years after enactment of the AIM Act, the statute requires that EPA review the 6 applications, and, if the statutory criteria are met, authorize the production or consumption, as applicable, of any regulated substance used in the application for renewable periods of not more than 5 years for exclusive use in the application.

**Alternatives:** The alternatives for establishing a subsection (e)(4)(B) rule are, for each application, to either authorize the production or consumption, as applicable, of any regulated substance used in an application for a renewable period of not more than 5 years for exclusive use in that application or to not extend the provisions under (e)(4)(B)(iv).

**Anticipated Cost and Benefits:** EPA is still evaluating the potential costs and benefits of this prospective action, but does not expect that this rule will have a significant economic effect.

**Risks:** EPA is still evaluating the scope and risks associated with a prospective rule.

**Timetable:**

Action	Date	FR Cite
NPRM .....	07/00/24	

**Regulatory Flexibility Analysis Required:** No.

**Government Levels Affected:** Federal.

**Agency Contact:** Nikita Naik, Environmental Protection Agency, Office of Air and Radiation,

Washington, DC 20460, Phone: 202 564–4957, Email: [naik.nikita@epa.gov](mailto:naik.nikita@epa.gov).  
RIN: 2060–AV98

**EAP—OFFICE OF CHEMICAL SAFETY  
AND POLLUTION PREVENTION  
(OCSPP)**

Proposed Rule Stage

**195. 1-Bromopropane (1-BP);  
Regulation Under the Toxic Substances  
Control Act (TSCA) [2070–AK73]**

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

*Unfunded Mandates:* Undetermined.  
*Legal Authority:* 15 U.S.C. 2605 Toxic Substances Control Act

*CFR Citation:* 40 CFR 751.

*Legal Deadline:* NPRM, Statutory, August 12, 2021, TSCA section 6(c).

Final, Statutory, August 12, 2022, TSCA section 6(c).

*Abstract:* This proposed rulemaking will address the unreasonable risk of injury to health presented by 1-bromopropane (1-BP). Section 6(a) of the Toxic Substances Control Act (TSCA) requires EPA address by rule any unreasonable risk identified in a TSCA risk evaluation and apply requirements to the extent necessary so the chemical no longer presents unreasonable risk. The Agency's development of this rule incorporates significant stakeholder outreach and public participation, including over 40 external meetings as well as required Federalism, Tribal, and Environmental Justice consultations and a Small Businesses Advocacy Review Panel. EPA's risk evaluation for 1-BP, describing the conditions of use, is in docket EPA–HQ–OPPT–2019–0235, with the 2022 unreasonable risk determination and additional materials in docket EPA–HQ–OPPT–2016–0741.

*Statement of Need:* This rulemaking is needed to address the unreasonable risk of 1-bromopropane that were identified following a risk evaluation completed under TSCA section 6(b). EPA reviewed the exposures and hazards of 1-bromopropane, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

*Summary of Legal Basis:* In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of

such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce; (2) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance for a particular use or for a particular use above a set concentration, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce for a particular use or for a particular use above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing by manufacturers or processors; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or regulate any manner or method of disposal for commercial purposes; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors, other persons, and the public and replace or repurchase the substance.

*Alternatives:* TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. As required under TSCA section 6(c), EPA will consider one or more primary alternative regulatory actions as part of the development of a proposed rule.

*Anticipated Cost and Benefits:* EPA will prepare a regulatory impact analysis as the Agency develops the proposed rule.

*Risks:* The 2020 Risk Evaluation for 1-BP identified potential health effects from short- and long-term exposure to 1-BP including non-cancer adverse health effects such as liver toxicity, kidney toxicity, reproductive toxicity, developmental toxicity, and neurotoxicity. Relative to cancer effects, the risk evaluation identified cancers hazards from carcinogenicity as well as genotoxicity, particularly for skin, intestinal, and lung tumors. For acute inhalation and dermal exposure scenarios, EPA identified non-cancer developmental effects (*i.e.*, decreased live litter size, and increases in post implantation loss) as the most sensitive endpoints. In the final 2022 Unreasonable Risk Determination, EPA

determined that 1-BP presents an unreasonable risk of injury to health. The unreasonable risk determination, based on developmental toxicity and cancer, is driven by risks to workers and occupational non-users (workers who do not directly handle the chemical but perform work in an area where the chemical is present) due to occupational exposures to 1-BP (*i.e.*, during manufacture, processing, industrial and commercial uses, and disposal); and to consumers and bystanders associated with consumer uses of 1-BP due to exposures from consumer use of 1-BP and 1-BP-containing products. EPA must issue risk management requirements so that this chemical substance no longer presents an unreasonable risk. For more information, visit: <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca>.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/24	
Final Rule .....	05/00/25	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* Federal, State.

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

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

*Additional Information:* EPA–HQ–OPPT–2020–0471.

*Sectors Affected:* 325 Chemical Manufacturing.

*URL For More Information:* <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluation-1-bromopropane-1-bp>.

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RIN: 2070–AK73

**EPA—OCSPP****196. Trichloroethylene; Regulation Under the Toxic Substances Control Act (TSCA) [2070-AK83]**

*Priority:* Other Significant.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 15 U.S.C. 2605 Toxic Substances Control Act

*CFR Citation:* 40 CFR 751.

*Legal Deadline:* NPRM, Statutory, November 30, 2021, TSCA section 6(c). Final, Statutory, November 30, 2022, TSCA section 6(c).

**Abstract:** On October 31, 2023, the Environmental Protection Agency (EPA) proposed to address the unreasonable risk of injury to human health presented by trichloroethylene (TCE) under its conditions of use as documented in EPA's November 2020 Risk Evaluation for TCE and January 2023 revised Unreasonable Risk Determination for TCE pursuant to the Toxic Substances Control Act (TSCA). TCE is widely used as a solvent in a variety of industrial, commercial and consumer applications including for hydrofluorocarbon (HFC) production, vapor and aerosol degreasing, and in lubricants, greases, adhesives, and sealants. TSCA requires that when EPA determines a chemical substance presents unreasonable risk that EPA address by rule the unreasonable risk of injury to health or the environment and apply requirements to the extent necessary so the chemical no longer presents unreasonable risk. EPA determined that TCE presents an unreasonable risk of injury to health due to the significant adverse health effects associated with exposure to TCE, including non-cancer effects (liver toxicity, kidney toxicity, neurotoxicity, immunotoxicity, reproductive toxicity, and developmental toxicity) as well as cancer (liver, kidney, and non-Hodgkin lymphoma) from chronic inhalation and dermal exposures to TCE. TCE is a neurotoxicant and is carcinogenic to humans by all routes of exposure. The most sensitive adverse effects of TCE exposure are non-cancer effects (developmental toxicity and immunosuppression) for acute exposures and developmental toxicity and autoimmunity for chronic exposures. To address the identified unreasonable risk, EPA proposed to: prohibit all manufacture (including import), processing, and distribution in commerce of TCE and industrial and commercial use of TCE for all uses, with longer compliance timeframes and workplace controls for certain processing and industrial and commercial uses (including proposed phaseouts and time-limited

exemptions); prohibit the disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works, with a time-limited exemption for cleanup projects; and establish recordkeeping and downstream notification requirements. The Agency's development of this rule incorporates significant stakeholder outreach and public participation, including over 40 external meetings as well as required Federalism, Tribal, and Environmental Justice consultations and a Small Businesses Advocacy Review Panel. EPA's risk evaluation for TCE, describing TCE's conditions of use is in docket EPA-HQ-OPPT-2019-0500, with the January 2023 unreasonable risk determination and additional materials in docket EPA-HQ-OPPT-2016-0737.55

**Statement of Need:** This rulemaking is needed to address the unreasonable risk from TCE that was identified following a risk evaluation completed under TSCA section 6(b). EPA reviewed the exposures and hazards of TCE, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

**Summary of Legal Basis:** In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce; (2) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance for a particular use or for a particular use above a set concentration, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce for a particular use or for a particular use above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing by manufacturers or processors; (5) Prohibit or regulate any manner or

method of commercial use; (6) Prohibit or regulate any manner or method of disposal for commercial purposes; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors, other persons, and the public and replace or repurchase the substance if required.

**Alternatives:** TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. TSCA section 6(c) requires that EPA consider one or more primary alternative regulatory actions as part of the development of a proposed rule under TSCA section 6(a). The primary alternative regulatory action would prohibit the manufacture (including import) and processing of TCE for all uses; prohibit the distribution in commerce and industrial and commercial use of TCE, as well as prohibitions on the disposal of TCE to industrial pre-treatment, industrial treatment, or publicly owned treatment works. The primary alternative regulatory action would involve longer timeframes for the prohibition of some industrial and commercial uses and for the associated manufacturing (including import) and processing. For all manufacturing (including import), processing, and industrial and commercial use of TCE that would continue more than one year after the publication of the final rule, workplace chemical protection program (WCPP) requirements, which would include a requirement to meet inhalation exposure concentration limits and exposure monitoring as well as requirements to reduce dermal exposures to TCE for certain continued conditions of use of TCE would be in effect until the respective prohibition compliance dates or, if applicable, expiration of the TSCA section 6(g) exemptions. The inhalation exposure concentration limits under the primary alternative regulatory action would be based on the immunotoxicity endpoint instead of the developmental toxicity endpoint as under the proposed regulatory action. The primary alternative regulatory action provides certain time-limited exemptions from requirements for uses of TCE that are critical or essential.

**Anticipated Cost and Benefits:** The monetized costs for this proposed rule are estimated to range from \$33.1 million annualized over 20 years at a 3% discount rate and \$40.5 million annualized over 20 years at a 7% discount rate. The monetized benefits are estimated to be \$18.0 to \$21.5 million annualized over 20 years at a

3% discount rate and \$8.2 million to \$10.3 million annualized over 20 years at a 7% discount rate. EPA believes that the balance of costs and benefits of this proposal cannot be fairly described without considering the additional, non-monetized benefits of mitigating the non-cancer adverse effects. These effects may include neurotoxicity, kidney toxicity, liver toxicity, immunotoxicity effects, reproductive effects, and developmental effects.

**Risks:** The 2020 Risk Evaluation for TCE identified significant adverse health effects associated with short- and long-term exposure to TCE, including non-cancer effects (immunosuppression and developmental toxicity) from acute inhalation exposures and dermal exposures, and non-cancer effects (liver toxicity, kidney toxicity, neurotoxicity, autoimmunity, reproductive toxicity, and developmental toxicity) and cancer (liver, kidney, and non-Hodgkin lymphoma) from chronic inhalation exposures to TCE. In the 2023 Final Unreasonable Risk Determination, EPA determined that TCE presents an unreasonable risk of injury to health. The unreasonable risk determination, based on immunotoxicity and cancer, is driven by risks to workers and ONUs (workers who do not directly handle the chemical but perform work in an area where the chemical is present) due to occupational exposures to TCE (*i.e.*, during manufacture, processing, industrial and commercial uses, and disposal); and to consumers and bystanders associated with consumer uses of TCE due to exposures from consumer use of TCE and TCE-containing products. For more information, visit: <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca>.

**Timetable:**

Action	Date	FR Cite
NPRM .....	10/31/23	88 FR 74712
NPRM Comment Period End.	12/15/23	
Final Rule .....	04/00/24	

**Regulatory Flexibility Analysis**  
**Required:** Yes.  
**Small Entities Affected:** Businesses.  
**Government Levels Affected:** Federal, State.  
**Federalism:** This action may have federalism implications as defined in E.O. 13132.  
**International Impacts:** This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.

**Additional Information:** EPA–HQ–OPPT–2020–0642.  
**Sectors Affected:** 325 Chemical Manufacturing.  
**URL For More Information:** <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-trichloroethylene-tce>.  
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**RIN:** 2070–AK83

**EPA—OCSPP**  
**197. N-Methylpyrrolidone (NMP); Regulation Under the Toxic Substances Control Act (TSCA) [2070–AK85]**

**Priority:** Other Significant. Major status under 5 U.S.C. 801 is undetermined.  
**Unfunded Mandates:** Undetermined.  
**Legal Authority:** 15 U.S.C. 2605 Toxic Substances Control Act  
**CFR Citation:** 40 CFR 751.  
**Legal Deadline:** NPRM, Statutory, December 23, 2021, TSCA sec. 6(c).  
Final, Statutory, December 23, 2022, TSCA sec. 6(c).  
**Abstract:** This proposed rulemaking will address the unreasonable risk of injury to health presented by n-methylpyrrolidone (NMP). Section 6(a) of the Toxic Substances Control Act (TSCA) requires EPA to address by rule any unreasonable risk identified in a TSCA section 6(b) risk evaluation by applying requirements to the extent necessary so the chemical no longer presents unreasonable risk. The Agency’s development of this rule incorporates significant stakeholder outreach and public participation, including over 40 external meetings as well as required Federalism, Tribal, and Environmental Justice consultations and a Small Businesses Advocacy Review Panel. EPA’s 2020 risk evaluation for NMP, describing its conditions of use is in docket EPA–HQ–OPPT–2019–0236, with the 2022 revised unreasonable risk determination and additional materials in docket EPA–HQ–OPPT–2016–0743.6  
**Statement of Need:** This rulemaking is needed to address the unreasonable risk from NMP that were identified following a risk evaluation completed

under TSCA section 6(b). EPA reviewed the exposures and hazards of NMP, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.  
**Summary of Legal Basis:** In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce; (2) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance for a particular use or for a particular use above a set concentration, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce for a particular use or for a particular use above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing by manufacturers or processors; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or regulate any manner or method of disposal for commercial purposes; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors, other persons, and the public and replace or repurchase the substance if required.  
**Alternatives:** TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. As required under TSCA section 6(c), EPA will consider one or more primary alternative regulatory actions as part of the development of a proposed rule.  
**Anticipated Cost and Benefits:** EPA will prepare an economic analysis as the Agency develops the proposed rule.  
**Risks:** The 2020 Risk Evaluation for NMP identified potential health effects for NMP including non-cancer adverse health effects such as liver toxicity,

kidney toxicity, immunotoxicity, reproductive toxicity, developmental toxicity, neurotoxicity, and irritation and sensitization. In the 2022 Final Unreasonable Risk Determination, EPA determined that NMP presents an unreasonable risk of injury to health. The unreasonable risk determination is driven by risks to workers due to occupational exposures to NMP (*i.e.*, during manufacture, processing, industrial and commercial uses, and disposal); and to consumers due to exposures from consumer use of NMP and NMP-containing products. For more information, visit: <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca>.

**Timetable:**

Action	Date	FR Cite
NPRM .....	02/00/24	
Final Rule .....	12/00/24	

**Regulatory Flexibility Analysis**

**Required:** Yes.

**Small Entities Affected:** Businesses.

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

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

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

**Additional Information:** EPA–HQ–OPPT–2020–0744.

**Sectors Affected:** 325 Chemical Manufacturing.

**URL For More Information:** <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-n-methylpyrrolidone-nmp>.

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RIN: 2070–AK85

**EPA–OCSPP**

**198. Procedures for Chemical Risk Evaluation Under the Toxic Substances Control Act (TSCA) [2070–AK90]**

**Priority:** Other Significant.

**Legal Authority:** 15 U.S.C. 2605 Toxic Substances Control Act

**CFR Citation:** 40 CFR 702.

**Legal Deadline:** None.

**Abstract:** As required under section 6(b)(4) of the Toxic Substances Control Act (TSCA), EPA published a final rule in 2017 that established a process for conducting risk evaluations to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation, under the conditions of use. This process incorporates the science requirements of the amended statute, including best available science and weight of the scientific evidence. The final rule established the steps of a risk evaluation process including: scope, hazard assessment, exposure assessment, risk characterization, and risk determination. The Agency has reconsidered the procedural framework rule for conducting such risk evaluations and determined that certain aspects of that framework should be revised to better align with applicable court decisions and the statutory text, to reflect the Agency's experience implementing the risk evaluation program following enactment of the 2016 TSCA amendments, and to allow for consideration of future scientific advances in the risk evaluation process without need to further amend the Agency's procedural rule.

**Statement of Need:** EPA's 2017 final rule that established a process for conducting risk evaluations under TSCA was challenged by several non-governmental organizations. In November 2019, the court in *Safer Chemicals, Healthy Families v. U.S. EPA*, 943 F.3d 397 (9th Cir. 2019) remanded certain provisions of the rule to EPA. Additionally, the 2017 rule was identified for review in accordance with Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (86 FR 7037, January 25, 2021). Consistent with the Court's direction and opinion in *Safer Chemicals, Healthy Families v. U.S. EPA*, and incorporating lessons learned in the process carrying out the first ten TSCA risk evaluations, the Agency is now considering revisions to the procedural framework and will solicit public comment on those changes through a notice of proposed rulemaking.

**Summary of Legal Basis:** TSCA section 6(b)(4) directed EPA to establish the process for conducting risk evaluations on chemical substances

under TSCA to identify any unreasonable risk of injury to health or the environment. Agencies have inherent authority to reconsider past decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). EPA is now exercising its inherent authority to reconsider past decisions and as such is considering revisions to that final rule based on the Court's opinion in *Safer Chemicals, Healthy Families v. U.S. EPA* to ensure that TSCA risk evaluations are supported by the best available science, aligned with the statutory requirements, and consistent with Congress' intent in the 2016 TSCA amendments.

**Alternatives:** Alternatives will not be developed as part of the development of a proposed rule.

**Anticipated Cost and Benefits:** EPA will analyze the incremental impacts associated with proposed amendments to requirements for manufacturer-requested risk evaluations as part of the development of a proposed rule.

**Risks:** This is a procedural rule related to risk evaluations and is not intended to directly address any particular risk. However, the rule would establish procedures by which EPA will evaluate whether a chemical substance presents an unreasonable risk of injury to health or the environment, including unreasonable risk to a potentially exposed or susceptible subpopulation. Rigorous procedures that support accurate identification of unreasonable risk are necessary to inform subsequent risk management action.

**Timetable:**

Action	Date	FR Cite
NPRM .....	10/30/23	88 FR 74292
NPRM Comment Period End.	12/14/23	
Final Rule .....	04/00/24	

**Regulatory Flexibility Analysis**

**Required:** No.

**Government Levels Affected:** None.

**Additional Information:**

**Sectors Affected:** 325 Chemical Manufacturing; 324110 Petroleum Refineries.

**URL For More Information:** <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca>.

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## EPA—OFFICE OF LAND AND EMERGENCY MANAGEMENT (OLEM)

### Proposed Rule Stage

#### 199. Revisions to Standards for the Open Burning/Open Detonation of Waste Explosives [2050-AH24]

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

*Unfunded Mandates*: Undetermined.

*Legal Authority*: 40 CFR 131; 42

U.S.C. 6924

*CFR Citation*: 40 CFR 264 and 265.

*Legal Deadline*: None.

*Abstract*: This rulemaking will consider revisions to the regulations that allow for the open burning and detonation (OB/OD) of waste explosives. The allowance or “variance” to the prohibition on the open burning of hazardous waste was established at a time when there were no alternatives to the safe treatment of waste explosives. However, recent findings from the National Academies of Sciences, Engineering, and Medicine and the EPA have identified safe alternatives that are potentially available to many energetic/explosive waste streams. Because there are potential safe alternatives in use today that capture and treat emissions prior to release, the EPA is considering revising regulations to promote the broader use of these alternatives, where applicable. As part of the rule development process, EPA has held two rounds of engagement with states, territories, tribes, environmental and community groups, and owners/operators of OB/OD units.

*Statement of Need*: Technological advances have been made since the 1980 Interim Status regulations were issued that banned the open burning of hazardous wastes but created an exception to allow open burning/open detonation (OB/OD) of waste explosives due to a lack of other safe modes of treatment. In 2019, EPA and the National Academies of Science, Engineering, and Medicine published reports documenting safe and available alternative treatment technologies that could potentially be used in lieu of OB/OD.

*Summary of Legal Basis*: The proposed rule would be established

under the authority of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA).

*Alternatives*: Based on recent information regarding availability of safe alternatives, we are revising the existing regulation to explicitly state how a demonstration of eligibility must be made.

*Anticipated Cost and Benefits*: The Agency will evaluate anticipated costs and benefits as part of the rule development process.

*Risks*: The Agency will evaluate risk reductions and impacts as part of the rule development process. It is currently early in the process to make such determinations.

#### Timetable:

Action	Date	FR Cite
NPRM .....	11/00/23	
Final Rule .....	09/00/24	

*Regulatory Flexibility Analysis Required*: No.

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

*Federalism*: Undetermined.

*Additional Information*:

*Sectors Affected*: 325920 Explosives Manufacturing; 562211 Hazardous Waste Treatment and Disposal; 926150 Regulation, Licensing, and Inspection of Miscellaneous Commercial Sectors; 56291 Remediation Services; 562910 Remediation Services; 56221 Waste Treatment and Disposal.

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*RIN*: 2050-AH24

## EPA—OLEM

#### 200. Listing of PFOA, PFOS, PFBS, and GenX as Resource Conservation and Recovery Act (RCRA) Hazardous Constituents [2050-AH26]

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

*Legal Authority*: 42 U.S.C. 6912 (a); 42 U.S.C. 6921; 42 U.S.C. 6924

*CFR Citation*: 40 CFR 261.

*Legal Deadline*: None.

*Abstract*: Based on public health and environmental protection concerns and in response to several petitions which requested EPA to take regulatory action on PFAS under RCRA, EPA is evaluating the existing toxicity and health effects data on four PFAS constituents to determine if they should be listed as RCRA Hazardous Constituents. If the existing data for the four PFAS constituents support listing any or all of these constituents as RCRA hazardous constituents, EPA will propose to list the constituents in a Federal Register notice for public comment. The four PFAS chemicals EPA will evaluate are: perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorobutane sulfonic acid (PFBS), hexafluoropropylene oxide dimer acid (HFPO-DA or GenX). EPA has communicated with interested stakeholders about this action and will do conduct additional outreach with the public, organizations, states, tribal groups, and affected parties following publication of a proposed rule.

*Statement of Need*: EPA has received three petitions recently requesting regulatory action on PFAS under the Resource Conservation and Recovery Act (RCRA), including a petition from the Governor of New Mexico on June 23, 2021. The New Mexico petition incorporated by reference the two other petitions received previously by EPA from Public Employees for Environmental Responsibility (PEER) and the Environmental Law Clinic at the University of California, Berkeley School of Law (et al.). This proposed rulemaking is in response to the three petitions and, if finalized, will list specific PFAS as RCRA hazardous constituents subject to corrective action requirements at hazardous waste treatment, storage, and disposal facilities (TSDFs).

*Summary of Legal Basis*: EPA has received three petitions recently requesting regulatory action on PFAS under the Resource Conservation and Recovery Act (RCRA), including a petition from the Governor of New Mexico on June 23, 2021. The New Mexico petition incorporated by reference the two other petitions received previously by EPA from Public Employees for Environmental Responsibility (PEER) and the Environmental Law Clinic at the University of California, Berkeley School of Law (et al.). This proposed rulemaking is in response to the three petitions and, if finalized, will list specific PFAS as RCRA hazardous constituents subject to corrective action



requirements at hazardous waste treatment, storage, and disposal facilities (TSDFs).

**Alternatives:** We have reviewed and evaluated the toxicity and health effects information for specific PFAS to determine if they should be proposed to be listed as RCRA hazardous constituents on Appendix VIII, and there are no other alternatives.

**Anticipated Cost and Benefits:** The Agency will evaluate anticipated costs and benefits as part of the rule development process.

**Risks:** The Agency will evaluate risk reductions and impacts as part of the rule development process. It is currently too early in the process to make such determinations.

**Timetable:**

Action	Date	FR Cite
NPRM .....	12/00/23	

**Regulatory Flexibility Analysis Required:** Undetermined.

**Government Levels Affected:** State, Federal.

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RIN: 2050-AH26

## EPA—OLEM

### 201. Definition of Hazardous Waste Applicable to Corrective Action for Solid Waste Management Units [2050-AH27]

**Priority:** Other Significant.

**Unfunded Mandates:** Undetermined.

**Legal Authority:** 42 U.S.C. 6921; 42 U.S.C. 6912 (a); 42 U.S.C. 6938; 42 U.S.C. 6934; 42 U.S.C. 6939g; 42 U.S.C. 6937; 42 U.S.C. 6939; 42 U.S.C. 6935; 42 U.S.C. 6974; 42 U.S.C. 6924; 42 U.S.C. 6925; 42 U.S.C. 6927

**CFR Citation:** 40 CFR 260; 40 CFR 261; 40 CFR 270.

**Legal Deadline:** None.

**Abstract:** EPA is considering a proposed rule that would modify the regulations at 40 CFR part 260, 261 and 270 to clarify that the definition of hazardous waste found in RCRA section

1004(5) is applicable to corrective action for releases from solid waste management units. The proposed rule would more clearly implement EPA's longstanding interpretation of its authority under RCRA section 3004(u) and (v).

**Statement of Need:** This regulatory modification is necessary so that 40 CFR 264.101 appropriately reflects the scope of corrective action cleanup requirements for hazardous waste treatment, storage, and disposal facilities as required by RCRA section 3004(u) and (v). The revision is expected to clarify that releases of hazardous wastes that are not regulatory hazardous wastes but meet the definition of hazardous waste in RCRA section 1004(5), must be addressed in the same manner as regulatory hazardous wastes under the corrective action program. This rulemaking is expected to impact the release of certain PFAS substances and is included as part of EPA's broader PFAS Strategic Roadmap.

**Summary of Legal Basis:** The proposed rule would be established under the authority of sections 3004(u) and (v) of the Solid Waste Disposal Act of 1965, as amended by subsequent enactments including the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HWSA).

**Alternatives:** We have reviewed the applicable regulations and no alternatives have been identified.

**Anticipated Cost and Benefits:** The Agency will evaluate anticipated costs and benefits as part of the rule development process.

**Risks:** The Agency will evaluate risk reductions and impacts as part of the rule development process. It is currently too early in the process to make such determinations.

**Timetable:**

Action	Date	FR Cite
NPRM .....	11/00/23	

**Regulatory Flexibility Analysis Required:** Undetermined.

**Government Levels Affected:** Federal, State.

**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](mailto:foster.barbara@epa.gov).

RIN: 2050-AH27

## EPA—OFFICE OF WATER (OW)

Proposed Rule Stage

### 202. National Primary Drinking Water Regulations for Lead and Copper: Improvements (LCRI) [2040-AG16]

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

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

**Legal Authority:** 42 U.S.C. 300f *et seq.* Safe Drinking Water Act

**CFR Citation:** 40 CFR 141; 40 CFR 142.

**Legal Deadline:** None.

**Abstract:** The Environmental Protection Agency (EPA) published the final Lead and Copper Rule Revision (LCRR) on January 15, 2021. EPA reviewed the LCRR and decided to initiate a new rulemaking process to improve the rule. This new National Primary Drinking Water Regulation is called the Lead and Copper Rule Improvements (LCRI). EPA is developing LCRI to strengthen the regulatory framework and address lead in drinking water.

**Statement of Need:** The EPA promulgated the final Lead and Copper Rule Revision (LCRR) on January 15, 2021 (86 FR 4198). Consistent with the directives of Executive Order 13990, the EPA is currently considering revising this rulemaking. The EPA will complete its review of the rule in accordance with those directives and conduct important consultations with affected parties. The EPA understands that the benefits of clean water are not shared equally by all communities and this review of the LCRR will be consistent with the policy aims set forth in Executive Order 13985, "Advancing Racial Equity and Support for Underserved Communities through the Federal Government."

**Summary of Legal Basis:** The Safe Drinking Water Act, section 1412, National Primary Drinking Water Regulations, authorizes EPA to initiate the development of a rulemaking if the agency has determined that the action maintains or improves the public health.

**Alternatives:** To be determined.

**Anticipated Cost and Benefits:** To be determined.

**Risks:** To be determined.

**Timetable:**

Action	Date	FR Cite
NPRM .....	11/00/23	
Final Rule .....	10/00/24	

**Regulatory Flexibility Analysis Required:** Undetermined.

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

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

*Additional Information:*

*Sectors Affected:* 23711 Water and Sewer Line and Related Structures Construction; 2213 Water, Sewage and Other Systems.

*Agency Contact:* Michael Goldberg, Environmental Protection Agency, Office of Water, 1200 Pennsylvania Avenue NW, 4601M, Washington, DC 20460, *Phone:* 202 564–1137, *Email:* goldberg.michael@epa.gov.

*Related RIN:* Related to 2040–AF15  
*RIN:* 2040–AG16

## EPA—OFFICE OF AIR AND RADIATION (OAR)

Final Rule Stage

### 203. National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations [2060–AU37]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 42 U.S.C. 7607(d); 42 U.S.C. 7414, 7601

*CFR Citation:* 40 CFR 63, subpart O.

*Legal Deadline:* None.

*Abstract:* In December 1994, pursuant to section 112(d) of the Clean Air Act, EPA promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Ethylene Oxide (EtO) Commercial Sterilization and Fumigation Operations (59 FR 62585). The NESHAP established standards for both major and area sources. EPA completed a residual risk and technology review for the NESHAP in 2006 and, at that time, concluded that no revisions to the standards were necessary. In this action, EPA will conduct the second technology review for the NESHAP, as required by law, and consider potential updates to the rule. To aid in this effort, EPA issued an advance notice of proposed rulemaking that solicited comment from stakeholders, undertook a Small Business Advocacy Review panel, which is needed when there is the potential for significant economic impacts to small businesses from any regulatory actions being considered, and has conducted outreach meetings within the communities affected by the highest-risk facilities as part of the development of this action. These meetings involved informing community members of the risk from EtO emissions and explaining how they can be involved in the rule writing process. EPA also held a

national webinar on this proposal. Accommodations were made for Spanish-language speaking communities, which are disproportionately affected by these EtO emissions. This proposal also reflects feedback EPA has received from representatives from local and state governments. For more information, please visit <https://www.epa.gov/stationary-sources-air-pollution/ethylene-oxide-emissions-standards-sterilization-facilities>.

*Statement of Need:* The National Air Toxics Assessment (NATA) released in August 2018 identified ethylene oxide (EtO) emissions as a potential concern in several areas across the country. The latest NATA estimates that EtO significantly contributes to potential elevated cancer risks in some census tracts. These elevated risks are largely driven by an EPA risk value that was updated in December 2016. Further investigation on NATA inputs and results led to the EPA identifying commercial sterilization using EtO as a source category contributing to some of these risks. Over the past two years, the EPA has been gathering additional information to help evaluate opportunities to reduce EtO emissions in this source category through potential NESHAP revisions. In this rule, EPA will address EtO emissions from commercial sterilizers.

*Summary of Legal Basis:* CAA section 112, 42 U.S.C. 7412, provides the legal framework and basis for regulatory actions addressing emissions of hazardous air pollutants from stationary sources. CAA section 112(d)(6) requires EPA to review, and revise as necessary, emission standards promulgated under CAA section 112(d) at least every 8 years, considering developments in practices, processes, and control technologies.

*Alternatives:* EPA is evaluating various options for reducing EtO emissions from commercial sterilizers under the NESHAP, such as pollution control equipment, reducing fugitive emissions, or monitoring.

*Anticipated Cost and Benefits:* Based on conversations with regulated entities who have been working to reduce emissions, the potential costs of controlling some emissions sources could be substantial.

*Risks:* As part of this rulemaking, EPA has been updating information regarding EtO emissions and the specific emission points within the source category. Preliminary analyses suggest that fugitive emissions from commercial sterilizers may substantially contribute to health risks associated with exposure to EtO.

## Timetable:

Action	Date	FR Cite
ANPRM .....	12/12/19	84 FR 67889
NPRM .....	04/13/23	88 FR 22790
NPRM Comment Period End.	06/12/23	
Final Rule .....	03/00/24	

## Regulatory Flexibility Analysis

*Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:* None.

*Additional Information:* EPA–HQ–OAR–2019–0178.

*Sectors Affected:* 311423 Dried and Dehydrated Food Manufacturing; 33911 Medical Equipment and Supplies Manufacturing; 561910 Packaging and Labeling Services; 325412 Pharmaceutical Preparation Manufacturing; 311942 Spice and Extract Manufacturing.

*Agency Contact:* Jon Witt, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code E143–05, Research Triangle Park, NC 27709, *Phone:* 919 541–5645, *Email:* witt.jon@epa.gov.

Kusondra King, Environmental Protection Agency, Office of Air and Radiation, Research Triangle Park, NC 27711, *Phone:* 919 541–4373, *Email:* king.kusondra@epa.gov.

*RIN:* 2060–AU37

## EPA—OAR

### 204. New Source Performance Standards and Emission Guidelines for Crude Oil and Natural Gas Facilities: Climate Review [2060–AV16]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 42 U.S.C. 7411

*CFR Citation:* 40 CFR 60; subpart OOOO, OOOOa, OOOOb, OOOOc, KKK; app. K.

*Legal Deadline:* None.

*Abstract:* On November 15, 2021, the EPA published a proposed rule to mitigate climate-destabilizing pollution and protect human health by reducing greenhouse gas and VOC emissions from the Crude Oil and Natural Gas source category (86 FR 63110). This action was in response to the January 20, 2021, Executive Order titled “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” In the November 2021 Proposal, pursuant to CAA section 111 the EPA proposed new standards of performance for greenhouse gases (in the form of methane limitations) and volatile organic compounds emissions and

Emission Guidelines for greenhouse gas emissions (in the form of methane limitations) from existing sources. The EPA also proposed several related actions stemming from the joint resolution of Congress, adopted on June 30, 2021, under the Congressional Review Act disapproving the EPA's final rule titled, Oil and Natural Gas Sector: "Emission Standards for New, Reconstructed, and Modified Sources Review," September 14, 2020 (2020 Policy Rule). Lastly, in the November 2021 Proposal the EPA proposed a protocol under the general provisions for OGI.

On December 6, 2022, the EPA published a supplemental proposed rule that was composed of two main actions (87 FR 74702). First, the EPA updated, strengthened, and expanded on the NSPS proposed in November 2021 under CAA section 111(b) for greenhouse gases (in the form of methane limitations) and volatile organic compounds emissions from new, modified, and reconstructed facilities. Second, the EPA updated, strengthened, and expanded the presumptive standards proposed for the Emission Guidelines in the November 2021 Proposal as part of the CAA section 111(d) EG for greenhouse gas emissions (in the form of methane limitations) from designated facilities. For purposes of the Emission Guidelines, the EPA also proposed the implementation requirements for states to limit greenhouse gas pollution (in the form of methane limitations) from designated facilities in the Crude Oil and Natural Gas source category under CAA section 111(d). The Agency expects to issue a final rule later in 2023.

**Statement of Need:** The final actions stem from the EPA's authority and obligation under CAA section 111 to directly regulate categories of new stationary sources that cause or contribute to endangerment from air pollution and promulgate EG for states to follow in regulating existing sources (designated facilities) in the source category.

**Summary of Legal Basis:** Clean Air Act section 111(b) provides the legal framework for establishing greenhouse gas emission standards (in the form of limitations on methane) and volatile organic compounds for new oil and natural gas sources. Clean Air Act section 111(d) provides the legal framework for establishing greenhouse gas emission standards (in the form of limitations on methane) for existing oil and natural gas sources.

**Alternatives:** The EPA has evaluated several options for new and existing

sources and will propose and solicit comment on those options.

**Anticipated Cost and Benefits:** The EPA's regulatory impact analyses for the December 2022 supplemental notice of proposed rulemaking can be found at document number EPA-HQ-OAR-2021-0317-1566 of the public docket (<https://www.regulations.gov/document/EPA-HQ-OAR-2021-0317-1566>).

**Risks:** The EPA's regulatory impact analyses for the December 2022 supplemental notice of proposed rulemaking can be found at document number EPA-HQ-OAR-2021-0317-1566 of the public docket (<https://www.regulations.gov/document/EPA-HQ-OAR-2021-0317-1566>).

#### Timetable:

Action	Date	FR Cite
NPRM .....	11/15/21	86 FR 63110
Supplemental NPRM.	12/06/22	87 FR 74702
Final Rule .....	12/00/23	

#### Regulatory Flexibility Analysis

**Required:** Yes.

**Small Entities Affected:** Businesses.

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

**Energy Effects:** Statement of Energy Effects planned as required by Executive Order 13211.

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

**Additional Information:** EPA-HQ-OAR-2021-0317. <https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry>.

**Sectors Affected:** 213111 Drilling Oil and Gas Wells; 2111 Oil and Gas Extraction; 211 Oil and Gas Extraction; 237120 Oil and Gas Pipeline and Related Structures Construction; 23712 Oil and Gas Pipeline and Related Structures Construction; 213112 Support Activities for Oil and Gas Operations.

**Agency Contact:** Amy Hambrick, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code E143-05, Research Triangle Park, NC 27711, Phone: 919 541-0964, Fax: 919 541-0516, Email: [hambrick.amy@epa.gov](mailto:hambrick.amy@epa.gov).

RIN: 2060-AV16

## EPA—OAR

### 205. Revisions to the Air Emission Reporting Requirements (AERR) [2060-AV41]

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

**Legal Authority:** 42 U.S.C. 7401 *et seq.* Clean Air Act

**CFR Citation:** 40 CFR 51.

**Legal Deadline:** None.

**Abstract:** On August 8, 2023 (88 FR 54118), the EPA proposed new requirements to improve the quality and completeness of HAP emissions data from stationary sources and all pollutant emissions from prescribed fires. Specifically, the EPA is proposing to require certain sources report information regarding emission of hazardous air pollutants (HAP); certain sources to report criteria air pollutants, their precursors and HAP; and to require State, local, and certain tribal air agencies to report prescribed fire data. Further, EPA is considering how best to quantify emissions from intermittent sources such as backup generators; how to obtain data from permitted facilities in Indian Country when a Tribe is not required to report emissions data; and how to address known data gaps, streamline processes, and improve data quality, documentation, and transparency for nonpoint and mobile sources. The proposed revisions also include changes for reporting data on airports, rail yards, commercial marine vessels, locomotives, and nonpoint sources. This proposed action would allow for EPA to annually collect (starting in 2027), hazardous air pollutant (HAP) emissions data for point sources in addition to continuing the criteria air pollutant and precursor (CAP) collection in place under the existing AERR. The proposed amendments would ensure that EPA has sufficient information to identify and solve air quality and exposure problems and ensure that communities have the data needed to understand significant environmental risks that may be impacting them.

**Statement of Need:** Since 2015, many aspects of emissions data collection and use have evolved. The EPA has continued to review hazardous air pollutant (HAP) emissions levels and associated public health risk through the Residual Risk and Technology (RTR) program, which in many cases has required Information Collection Requests (ICRs) under Section 114 of the Act. Such collection efforts have proven very time consuming and limited EPA's ability to act quickly. Furthermore, as the EPA gains insight into the risks posed by certain chemicals, such as Ethylene Oxide, we have found ourselves limited by the data available on emissions sources. New compounds continue to be identified as public health threats, such as per- and polyfluoroalkyl substances (PFAS), which may be listed as HAPs in the

future. Currently, States are required to report the emissions from sources in their state to EPA. In practice, that has meant emissions are reported only for facilities permitted at the state level. Facilities permitted at the federal level technically do not fall under the reporting requirements, and consequently, some never report emissions to the EPA, which does not allow for proper EPA and state program implementation. Requiring HAPs for point sources is essential to addressing continued public health risks and environmental justice issues.

**Summary of Legal Basis:** Section 114(a)(1) of the CAA authorizes the Administrator to, among other things, require certain persons (explained below) on a one-time, periodic, or continuous basis to keep records, make reports, undertake monitoring, sample emissions, or provide such other information as the Administrator may reasonably require. The EPA may require this information of any person who (i) owns or operates an emission source, (ii) manufactures control or process equipment, (iii) the Administrator believes may have information necessary for the purposes set forth in CAA section 114, or (iv) is subject to any requirement of the Act (except for manufacturers subject to certain Title II requirements). The information may be required for the purposes of developing an implementation plan, an emission standard under sections 111, 112, or 129, determining if any person is in violation of any standard or requirement of an implementation plan or emissions standard, or “carrying out any provision” of the Act (except for a provision of Title II with respect to manufacturers of new motor vehicles or new motor vehicle engines).

**Alternatives:** The EPA is also proposing options and alternatives for consideration that may allow the States to report for owners/operators of regulated facilities.

**Anticipated Cost and Benefits:** This action has an associated Regulatory Impact Analysis (RIA), which describes the anticipated costs and benefits of this proposed action. The RIA is summarized in this action and provided in the docket for this action. This action’s total cost impact is estimated at \$117.4 million on average annually from 2024 to 2026, and then is estimated at \$477.9 million in 2027. All of these costs are in 2021 dollars. The increase in costs for owners and operators of affected sources in 2027 reflects full implementation of the proposed rule if finalized for the entire population of affected sources.

**Risks:** No risks are associated with this action as these are proposed reporting requirements.

**Timetable:**

Action	Date	FR Cite
NPRM .....	08/09/23	88 FR 54118
NPRM Comment Period Extended.	09/14/23	88 FR 63046
NPRM Comment Period End.	10/18/23	
Final Rule .....	07/00/24	

**Regulatory Flexibility Analysis Required:** Yes.

**Small Entities Affected:** Businesses, Governmental Jurisdictions.

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

**Additional Information:** EPA–HQ–OAR–2004–0489.

**Agency Contact:** Marc Houyoux, Environmental Protection Agency, Office of Air and Radiation, C339–02, Research Triangle Park, NC 27711, Phone: 919 541–3649, Fax: 919 541–0684, Email: [houyoux.marc@epa.gov](mailto:houyoux.marc@epa.gov).  
**RIN:** 2060–AV41

## EPA—OAR

### 206. Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles [2060–AV49]

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

**Legal Authority:** 42 U.S.C. 7401 to 7671q

**CFR Citation:** 40 CFR 86; 40 CFR 600.

**Legal Deadline:** None.

**Abstract:** On April 12, 2023, EPA announced a proposal for new multipollutant emissions standards to further reduce harmful air pollutant emissions from light-duty passenger cars and light trucks and Class 2b and 3 vehicles (“medium-duty vehicles” or MDVs) under its authority in section 202(a) of the Clean Air Act (CAA), 42 U.S.C. 7521(a), starting with model year 2027. The proposal builds upon EPA’s final standards for federal greenhouse gas emissions standards for passenger cars and light trucks for model years 2023 through 2026. The proposed standards would result in significant reductions in emissions of criteria pollutants, GHGs, and air toxics, resulting in significant benefits for public health and welfare. EPA also estimates that the proposal would result in reduced vehicle operating costs for consumers. The proposed standards would be phased in over model years 2027 through 2032. EPA conducted

outreach with a wide range of interested stakeholders to gather input which was considered in developing the proposal, and will continue to engage with the public and all interested stakeholders as part of our regulatory development process as we develop the final rule.

**Statement of Need:** This action is consistent with President Biden’s Executive Order, “Strengthening American Leadership in Clean Cars and Trucks.”

**Summary of Legal Basis:** CAA section 202(a).

**Alternatives:** EPA requested comment to address alternative options in the proposed rule.

**Anticipated Cost and Benefits:** EPA analyzed costs and benefits in the proposed rule.

**Risks:** EPA evaluated the risks of this rulemaking in the proposed rule.

**Timetable:**

Action	Date	FR Cite
NPRM .....	05/05/23	88 FR 29184
NPRM Comment Period End.	07/05/23	
Final Rule .....	03/00/24	

**Regulatory Flexibility Analysis**

**Required:** No.

**Government Levels Affected:** Federal.

**Additional Information:**

**Sectors Affected:** 811198 All Other Automotive Repair and Maintenance; 336111 Automobile Manufacturing; 423110 Automobile and Other Motor Vehicle Merchant Wholesalers; 811112 Automotive Exhaust System Repair; 81111 Automotive Mechanical and Electrical Repair and Maintenance; 336112 Light Truck and Utility Vehicle Manufacturing; 335312 Motor and Generator Manufacturing.

**Agency Contact:** Elizabeth Miller, Environmental Protection Agency, Office of Air and Radiation, 2565 Plymouth Road, Ann Arbor, MI 48105, Phone: 734 214–4703, Email: [miller.elizabeth@epa.gov](mailto:miller.elizabeth@epa.gov).

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**RIN:** 2060–AV49

## EPA—OAR

### 207. Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3 [2060–AV50]

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

**Legal Authority:** 21 U.S.C. 346a; 33 U.S.C. 1318; 33 U.S.C. secs. 1311, 1314,

1316, 1317, 1318, 1361; 15 U.S.C. 2003; 33 U.S.C. 1326; 42 U.S.C. 300f; 42 U.S.C. 242b; 33 U.S.C. 1342; 33 U.S.C. 1345; 42 U.S.C. 1857; 42 U.S.C. 7542; 42 U.S.C. 6901; 42 U.S.C. 9601; 49 U.S.C. 32901 to 32919q, Pub. L. 109–58; 33 U.S.C. 1901; 42 U.S.C. 11023; 15 U.S.C. 2601

*CFR Citation:* 40 CFR 1037.1.

*Legal Deadline:* None.

*Abstract:* On April 12, 2023, EPA announced a proposal for more stringent standards to reduce greenhouse gas emissions from HD vehicles beginning in model year (MY) 2027. The new standards would be applicable to HD vocational vehicles (such as delivery trucks, refuse haulers, public utility trucks, transit, shuttle, school buses, etc.) and tractors (such as day cabs and sleeper cabs on tractor-trailer trucks). Specifically, EPA proposed stronger CO<sub>2</sub> standards for MY 2027 HD vehicles that go beyond the current standards that apply under the HD Phase 2 Greenhouse Gas program. EPA also proposed an additional set of CO<sub>2</sub> standards for HD vehicles that would begin to apply in MY 2028, with progressively more stringent standards each model year through 2032. This proposed Phase 3” greenhouse gas program maintains the flexible structure created in EPA’s Phase 2 greenhouse gas program, which is designed to reflect the diverse nature of the heavy-duty industry. EPA has conducted outreach with a wide range of interested stakeholders to gather input which we have considered in developing this proposal, and we will continue to engage with the public and all interested stakeholders as part of our regulatory development process.

*Statement of Need:* This action is consistent with President Biden’s Executive Order, “Strengthening American Leadership in Clean Cars and Trucks.”

*Summary of Legal Basis:* CAA section 202(a).

*Alternatives:* EPA requested comment to address alternative options in the proposed rule.

*Anticipated Cost and Benefits:* EPA analyzed costs and benefits in the proposed rule.

*Risks:* EPA evaluated the risks of this rulemaking in the proposed rule.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/27/23	88 FR 25926
NPRM Comment Period End.	06/16/23	
Final Rule .....	03/00/24	

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* None.

*Additional Information:*

*Sectors Affected:* 811198 All Other Automotive Repair and Maintenance; 336111 Automobile Manufacturing; 811112 Automotive Exhaust System Repair; 336120 Heavy Duty Truck Manufacturing; 336112 Light Truck and Utility Vehicle Manufacturing; 333618 Other Engine Equipment Manufacturing; 336212 Truck Trailer Manufacturing.

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*RIN:* 2060–AV50

## EPA—OAR

### 208. Reconsideration of the National Ambient Air Quality Standards for Particulate Matter [2060–AV52]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 42 U.S.C. 7401 *et seq.* Clean Air Act

*CFR Citation:* 40 CFR 50.

*Legal Deadline:* None.

*Abstract:* Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria for the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every 5 years. On December 18, 2020, the EPA published a final decision retaining the NAAQS for particulate matter (PM), which was the subject of several petitions for reconsideration as well as petitions for judicial review. As directed in Executive Order 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” signed by President Biden on January 20, 2021, EPA is undertaking a reconsideration of the December 2020 decision to retain the PM NAAQS because the available scientific evidence and technical information indicate that the current standards may not be adequate to protect public health and welfare, as required by the Clean Air Act. As part of this reconsideration, EPA developed a Supplement to the 2019 PM Integrated Science Assessment (ISA) and a Policy Assessment to take into account the most up-to-date science on public health impacts of PM and

engaged with the chartered Clean Air Scientific Advisory Committee (CASAC) and a newly-constituted expert CASAC PM panel. The notice of proposed rulemaking was signed on January 5, 2023, and a final rule will be issued in fall 2023. EPA proposed to revise the level of the primary annual PM<sub>2.5</sub> standard from its current level of 12 µg/m<sup>3</sup> to within the range of 9–10 µg/m<sup>3</sup>. EPA proposed to retain all other PM NAAQS, including the primary and secondary 24-hour PM<sub>2.5</sub> standards, the primary and secondary 24-hour PM<sub>10</sub> standards, and the secondary annual PM<sub>2.5</sub> standard. EPA also proposed revisions to the Air Quality Index (AQI) and monitoring network requirements.

*Statement of Need:* Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria and national ambient air quality standards (NAAQS) every 5 years. On December 18, 2020, EPA published a final rule retaining the NAAQS for particulate matter, without revision. On June 10, 2021, EPA announced that it is reconsidering the December 2020 decision on the air quality standards for PM.

*Summary of Legal Basis:* Under the Clean Air Act Amendments of 1977, EPA is required to review and if appropriate revise the air quality criteria and the primary (health-based) and secondary (welfare-based) national ambient air quality standards (NAAQS) every 5 years.

*Alternatives:* The main alternative for the Administrator’s decision on the review of the national ambient air quality standards for particulate matter is whether to retain or revise the existing standards.

*Anticipated Cost and Benefits:* When the Agency proposes revisions to the standards, the Agency prepares a Regulatory Impact Analysis (RIA) to provide the public with illustrative estimates of the potential costs and health and welfare benefits of attaining the revised standards. However, the Clean Air Act makes clear that the economic and technical feasibility of attaining standards are not to be considered in setting or revising the NAAQS, although such factors may be considered in the development of state plans to implement the standards.

*Risks:* The reconsideration builds on the review completed in 2020, which included the preparation by EPA of an Integrated Review Plan, an Integrated Science Assessment, and a Policy Assessment, which includes a risk/exposure assessment, with opportunities for review by the EPA’s Clean Air Scientific Advisory

Committee (CASAC) and the public. These documents informed the Administrator's final decision to retain the PM standards in 2020. As a part of the reconsideration, EPA prepared a Supplement to the 2019 PM Integrated Science Assessment and a Policy Assessment, which was reviewed at a public meeting by the CASAC. These documents informed the Administrator's proposed decisions on whether to revise the PM NAAQS, and the Administrator's final decisions on whether to revise the PM NAAQS will take into consideration these documents, CASAC advice, and public comment on the proposed decision.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/27/23	88 FR 5558
NPRM Comment Period End.	03/28/23	
Final Rule .....	12/00/23	

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* None.

*Additional Information:* EPA-HQ-OAR-2015-0072.

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Karen Wesson, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code C504-06, Research Triangle Park, NC 27711, *Phone:* 919 541-3515, *Email:* [wesson.karen@epa.gov](mailto:wesson.karen@epa.gov).

*RIN:* 2060-AV52

## EPA—OAR

### 209. NESHAP: Coal- and Oil-Fired Electric Utility Steam Generating Units—Review of the Residual Risk and Technology Review [2060-AV53]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 42 U.S.C. 7401 to 7671q

*CFR Citation:* 40 CFR 63, subpart UUUUU.

*Legal Deadline:* None.

*Abstract:* On February 16, 2012, EPA promulgated National Emission Standards for Hazardous Air Pollutants for Coal- and Oil-fired Electric Utility Steam Generating Units (77 FR 9304). The rule (40 CFR part 63, subpart UUUUU), commonly referred to as the Mercury and Air Toxics Standards (MATS), includes standards to control

hazardous air pollutant (HAP) emissions from new and existing coal- and oil-fired electric utility steam generating units (EGUs) located at both major and area sources of HAP emissions. There have been several regulatory actions regarding MATS since February 2012, including a May 22, 2020, action that completed a reconsideration of the appropriate and necessary finding for MATS and finalized the residual risk and technology review (RTR) conducted for the Coal- and Oil-Fired EGU source category regulated under MATS (85 FR 31286). The Biden Administration's Executive Order 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis, "directs all executive departments and agencies (agencies) to immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions during the last 4 years that conflict with these important national objectives, and to immediately commence work to confront the climate crisis." Section 2(a)(iv) of the Executive Order specifically directs that the Administrator consider publishing, as appropriate and consistent with applicable law, a proposed rule suspending, revising, or rescinding the "National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review," 85 FR 31286 (May 22, 2020). As directed by Executive Order 13990, EPA reviewed the RTR portion of the May 22, 2020 final action and, proposed to update and strengthen the MATS on April 24, 2023 (88 FR 24854). EPA finalized the Revocation of the 2020 Reconsideration and Affirmation of the Appropriate and Necessary Supplemental Finding on February 15, 2023 (88 FR 13956).

*Statement of Need:* Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis," directs EPA to review the May 2020 RTR. EPA will issue the results of the review in a notice of proposed rulemaking and will solicit comment on the review.

*Summary of Legal Basis:* CAA section 112, 42 U.S.C. 7412, provides the legal framework and basis for regulatory actions addressing emissions of hazardous air pollutants from stationary sources.

*Alternatives:* EPA has evaluated several options for reviewing the RTR and will take comment on the review.

*Anticipated Cost and Benefits:* EPA projects the present value of net benefits

to be \$2.4 billion to \$3.0 billion. This includes \$1.2 billion to \$1.9 billion in health benefits, \$1.4 billion in climate benefits, and compliance costs of \$230 million to \$330 million. EPA projects the estimated annualized value net benefits to be \$300 million to \$350 million. This includes \$170 million to \$220 million in health benefits, \$170 million in climate benefits, and compliance costs of \$33 million to \$38 million. EPA projects that the proposed changes would result in the following emission reductions in the year 2035:

- 82 pounds of mercury
- 800 tons of fine particulate matter (PM<sub>2.5</sub>)
- 8,800 tons of sulfur dioxide
- 8,700 tons of nitrogen oxides
- 5 million tons of carbon dioxide

*Risks:* The results of the 2020 RTR showed that emissions of HAP from coal- and oil-fired power plants have been reduced such that residual risk is at an acceptable level. EPA reviewed the 2020 residual risk assessment and determined the risk review was conducted using approaches and methodologies that are consistent with prior risk analyses and reviews for other industrial sectors. Although EPA is not reopening the 2020 risk review, the proposed standards under the technology review would achieve reductions in HAP emissions from power plants and likely to reduce HAP exposures to affected populations.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/24/23	88 FR 24854
Final Rule .....	04/00/24	

*Regulatory Flexibility Analysis*

*Required:* Undetermined.

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

*Additional Information:* EPA-HQ-OAR-2018-0794.

*Sectors Affected:* 221122 Electric Power Distribution; 221112 Fossil Fuel Electric Power Generation.

*URL For More Information:* <https://www.epa.gov/stationary-sources-air-pollution/mercury-and-air-toxics-standards>.

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RIN: 2060-AV53

## EPA—OAR

### 210. NSPS for the Synthetic Organic Chemical Manufacturing Industry and NESHAP for the Synthetic Organic Chemical Manufacturing Industry and Group I & II Polymers and Resins Industry [2060-AV71]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 42 U.S.C. 7401 to 7671q; 42 U.S.C. 7401

*CFR Citation:* 40 CFR 63, subpart F; 40 CFR 63, subpart G; 40 CFR 63, subpart H; 40 CFR 63, subpart I; 40 CFR 63, subpart U; 40 CFR 63, subpart W; 40 CFR 60, subpart VVa; 40 CFR 60, subpart III; 40 CFR 60, subpart NNN; 40 CFR 60, subpart RRR.

*Legal Deadline:* NPRM, Judicial, December 16, 2022, *Texas*

*Environmental Justice Advocacy Services et al. v. EPA*, 1:20-cv-03733-RJL consent Decree.

Final, Judicial, March 29, 2024, *Texas*  
*Environmental Justice Advocacy Services et al. v. EPA*, 1:20-cv-03733-RJL consent Decree.

*United States District Court for the District of Columbia, Texas*  
*Environmental Justice Advocacy Services, California Communities Against Toxics Environmental Integrity Project, Louisiana Environmental Action Network, Ohio Valley Environmental Council, Rise St. James, and Sierra Club Plaintiffs, v. United States Environmental Protection Agency*, Defendant. Civil Action No. 1:20-cv-03733-RJL.

**Abstract:** This action will address the agency's technology review under Clean Air Act (CAA) section 112(d)(6) of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for four subparts in 40 CFR part 63 (subparts F, G, H, and I) which are commonly referred to together as the Hazardous Organic NESHAP (HON) and that apply to the Synthetic Organic Chemical Manufacturing Industry (SOCMI) and to equipment leaks from certain non-SOCMI processes. This action will also address the agency's technology review of the NESHAP for two subparts in 40 CFR part 63 (subparts U and W) that apply to the Group I and Group II Polymers and Resins industries. The HON standards were most recently updated when the agency conducted a residual risk and technology review (RTR) on December 21, 2006. Similarly, the Group I and II

Polymers and Resins NESHAP were most recently updated when the agency conducted its RTR on December 16, 2008, and April 21, 2011. The HON and Group I and II Polymers and Resins NESHAP contain maximum achievable control technology (MACT) standards for controlling emissions of hazardous air pollutants (HAP) from process vents, storage vessels, transfer operations, heat exchange systems, wastewater streams, and equipment leaks. The HAP emitted from these emission sources include, but are not limited to, ethylene oxide, benzene, 1,3-butadiene, vinyl chloride, ethylene dichloride, methanol, hexane, toluene, xylenes, and chloroprene. The agency also plans to consider risks from the SOCMI source category and from the Neoprene Production source category in the Group I Polymers and Resins NESHAP during its technology review and to ensure the standards continue to provide an ample margin of safety to protect public health. Lastly, this action will also address the agency's review, under CAA section 111(b)(1)(B), of four New Source Performance Standards (NSPS) in 40 CFR part 60 (subparts III, NNN, RRR, and VVa) for emissions of Volatile Organic Compound (VOC) from SOCMI air oxidation unit processes, SOCMI distillation operations, SOCMI reactor processes, and equipment leaks located at SOCMI sources. These subparts were originally promulgated pursuant to section 111(b) of the CAA on June 29, 1990 (subparts III and NNN), August 31, 1993 (subpart RRR), and November 16, 2007 (subpart VVa). On April 25, 2023, the EPA published a proposed rulemaking in the **Federal Register** (see 88 FR 25080) for this action. In addition, the EPA has conducted public outreach activities, including hosting an informational webinar on April 13, 2023, and holding a public hearing on the proposed rulemaking on May 16, 2023.

**Statement of Need:** The EPA has a mandatory duty under CAA section 111 to at least every 8 years, review and, if appropriate, revise its NSPS governed by this section of the CAA. Similarly, EPA has a mandatory duty under CAA section 112 to at least every 8 years, review, and revise as necessary (taking into account developments in practices, processes, and control technologies), its NESHAP promulgated under this section of the CAA. Thus, this action will address EPA's mandatory obligations to conduct such reviews for various NSPS (40 CFR part 60, subparts III, NNN, RRR, and VVb) and NESHAP (40 CFR part 63, subparts F, G, H, I, U and W) that apply to the chemical industry, for which EPA is under a

consent decree deadline to finalize such actions. The proposed rulemaking for this action was previously published in the **Federal Register** on April 25, 2023 (see 88 FR 25080).

**Summary of Legal Basis:** EPA has a mandatory duty to conduct reviews of its NSPS and NESHAP under CAA sections 111 and 112, respectively, at least every 8 years. Pursuant to a consent deadline of March 29, 2024, the Administrator of EPA must sign a final rule containing any revisions of EPA's review of various chemical sector rules, including various NSPS (40 CFR part 60, subpart III, NNN, RRR, and VVb) and NESHAP (40 CFR part 63, subparts F, G, H, I, U, and W) that apply to the chemical industry.

**Alternatives:** None, as EPA has a mandatory duty to conduct its review of these rules and is under a consent decree deadline to do so.

**Anticipated Cost and Benefits:** The anticipated costs and benefits of the final action are to be determined. For the proposed action that published in the **Federal Register** on April 25, 2023 (see 88 FR 25080), EPA estimated the costs of implementing the proposed rules at approximately \$501 million in total capital costs and approximately \$190 million a year in total annualized costs. For benefits in the proposed action, EPA also estimated the value of the health benefits of reducing ozone as result of reducing VOC emissions. EPA estimates that the value of those benefits would be \$6.3 million in 2024 and could be as much as \$62 million (2021 dollars, 3 percent discount rate).

**Risks:** The EPA is conducting a discretionary residual risk assessment in this action under CAA section 112(f)(2) to address unacceptable risks from ethylene oxide and chloroprene emissions coming from HON and Neoprene Production sources covered under the Group I Polymers and Resins NESHAP, respectively.

#### Timetable:

Action	Date	FR Cite
NPRM .....	04/25/23	88 FR 25080
NPRM Comment Period End.	06/26/23	
Final Rule .....	03/00/24	

#### Regulatory Flexibility Analysis

**Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** None.

**Sectors Affected:** 3251 Basic Chemical Manufacturing; 325 Chemical Manufacturing.

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RIN: 2060-AV71

## **EPA—OFFICE OF CHEMICAL SAFETY AND POLLUTION PREVENTION (OCSPP)**

Final Rule Stage

### **211. Methylene Chloride (MC); Regulation Under the Toxic Substances Control Act (TSCA) [2070-AK70]**

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Unfunded Mandates:* This action may affect the private sector under Public Law 104-4.

*Legal Authority:* 15 U.S.C. 2605 Toxic Substances Control Act

*CFR Citation:* 40 CFR 751.

*Legal Deadline:* NPRM, Statutory, June 24, 2021, TSCA section 6(c). Final, Statutory, June 24, 2022, TSCA section 6(c).

*Abstract:* On May 5, 2023, EPA proposed a rule under the Toxic Substances Control Act (TSCA) to address the unreasonable risk of injury to human health from methylene chloride. TSCA requires that EPA address by rule any unreasonable risk of injury to health or the environment identified in a TSCA risk evaluation and apply requirements to the extent necessary so that the chemical no longer presents unreasonable risk. Methylene chloride, also known as dichloromethane, is acutely lethal, a neurotoxicant, a likely human carcinogen, and presents cancer and non-cancer risks following chronic exposures as well as acute risks. Central nervous system depressant effects can result in loss of consciousness and respiratory depression, resulting in irreversible coma, hypoxia, and eventual death, including 85 documented fatalities from 1980 to 2018, a majority of which were occupational fatalities. Nevertheless, methylene chloride is still a widely used solvent in a variety of consumer and commercial applications including adhesives and sealants, automotive products, and paint and coating removers. To address the identified unreasonable risk, EPA proposed to: prohibit the manufacture, processing, and distribution in commerce of

methylene chloride for consumer use; prohibit most industrial and commercial uses of methylene chloride; require a workplace chemical protection program (WCPP), which would include a requirement to meet inhalation exposure concentration limits and exposure monitoring for certain continued conditions of use of methylene chloride; require recordkeeping and downstream notification requirements for several conditions of use of methylene chloride; and provide certain time-limited exemptions from requirements for uses of methylene chloride that would otherwise significantly disrupt national security and critical infrastructure. The Agency's development of this rule incorporated significant stakeholder outreach and public participation, including public webinars and over 40 external meetings as well as required Federalism, Tribal, and Environmental Justice consultations and a Small Businesses Advocacy Review Panel. EPA's risk evaluation, describing the conditions of use is in docket EPA-HQ-OPPT-2019-0437, with the 2022 unreasonable risk determination and additional materials in docket EPA-HQ-OPPT-2016-0742.

*Statement of Need:* This rulemaking is needed to address the unreasonable risk from methylene chloride that was identified in a risk evaluation completed under TSCA section 6(b). EPA reviewed the exposures and hazards of methylene chloride, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

*Summary of Legal Basis:* In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce; (2) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance for a particular use or

for a particular use above a set concentration, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce for a particular use or for a particular use above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing by manufacturers or processors; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or regulate any manner or method of disposal for commercial purposes; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors, other persons and the public and replace or repurchase the substance.

*Alternatives:* TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. TSCA section 6(c) requires EPA to consider one or more primary alternative regulatory actions as part of the development of a proposed rule under TSCA section 6(a). The primary alternative regulatory action for this rulemaking would, like the proposed action, prohibit the manufacture, processing, and distribution in commerce of methylene chloride for consumer use; prohibit most industrial and commercial uses of methylene chloride; require a workplace chemical protection program (WCPP), which would include a requirement to meet inhalation exposure concentration limits and exposure monitoring for certain continued conditions of use of methylene chloride; require recordkeeping and downstream notification requirements for several conditions of use of methylene chloride; and provide certain time-limited exemptions from requirements for uses of methylene chloride that would otherwise significantly disrupt national security and critical infrastructure. This primary alternative regulatory action includes longer compliance timeframes and additional uses under workplace chemical protection program, in comparison to the proposed action.

*Anticipated Cost and Benefits:* EPA's analysis of the incremental, non-closure-related costs of this proposed rule is estimated to be \$13.2 million annualized over 20 years at a 3% discount rate and \$14.5 million annualized over 20 years at a 7% discount rate. The proposed rule involves health benefits for the American public, some of which can be monetized and others that, while tangible and significant, cannot be

monetized. Although some benefits cannot be quantified, they are not necessarily less important than the quantified benefits. The monetized benefits of this rule are approximately \$17.7 to \$18.5 million annualized over 20 years at a 3% discount rate and \$13.4 to \$13.9 million annualized over 20 years at a 7% discount rate.

**Risks:** EPA determined that methylene chloride presents an unreasonable risk to human health. EPA must issue risk management requirements so that this chemical substance no longer presents an unreasonable risk. For more information, visit: <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca>.

**Timetable:**

Action	Date	FR Cite
NPRM .....	05/03/23	88 FR 28284
NPRM Comment Period End.	07/03/23	
Final Rule .....	03/00/24	

**Regulatory Flexibility Analysis Required:** Yes.

**Small Entities Affected:** Businesses.

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

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

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

**Additional Information:** EPA-HQ-OPPT-2020-0465.

**Sectors Affected:** 325 Chemical Manufacturing.

**URL For More Information:** <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-methylene-chloride>.

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RIN: 2070-AK70

**EPA—OCSPP**

**212. Carbon Tetrachloride (CTC); Regulation Under the Toxic Substances Control Act (TSCA) [2070-AK82]**

**Priority:** Other Significant.

**Legal Authority:** 15 U.S.C. 2605 Toxic Substances Control Act

**CFR Citation:** 40 CFR 751.

**Legal Deadline:** NPRM, Statutory, November 4, 2021, TSCA section 6(c). Final, Statutory, November 4, 2022, TSCA section 6(c).

**Abstract:** The Environmental Protection Agency (EPA) proposed to address the unreasonable risks of injury to health presented by carbon tetrachloride (CTC) under its conditions of use as documented in EPA's 2020 Risk Evaluation for Carbon Tetrachloride and 2022 Revised Unreasonable Risk Determination for Carbon Tetrachloride pursuant to the Toxic Substances Control Act (TSCA). CTC is a volatile, organic compound that is primarily used as a feedstock (i.e., processed as a reactant) in the making of products such as refrigerants, aerosol propellants, and foam-blowing agents. TSCA requires that EPA address by rule any unreasonable risk of injury to health or the environment identified in a TSCA risk evaluation and apply requirements to the extent necessary so that the chemical no longer presents unreasonable risk. EPA determined that CTC presents an unreasonable risk of injury to health due to cancer from chronic inhalation and dermal exposures and liver toxicity from chronic inhalation, chronic dermal, and acute dermal exposures in the workplace. To address the identified unreasonable risk under TSCA, EPA proposed to establish workplace safety requirements for most conditions of use, including the condition of use related to the making of low Global Warming Potential (GWP) hydrofluoroolefins (HFOs), prohibit the manufacture (including import), processing, distribution in commerce, and industrial/commercial use of CTC for conditions of use where information indicates use of CTC has already been phased out, and establish recordkeeping and downstream notification requirements. The use of CTC in low GWP HFOs is particularly important in the Agency's efforts to support the American Innovation and Manufacturing Act of 2020 (AIM Act) and the Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, which was ratified on October 26, 2022. The Agency's development of this rule incorporates significant stakeholder outreach and public participation. EPA

engaged in discussions with industry, non-governmental organizations, other government agencies, technical experts and users of CTC, and the general public to hear from users, academics, manufacturers, and members of the public health community about practices related to commercial uses of CTC; public health impacts of CTC; the importance of CTC in the various uses subject to this proposed rule; frequently-used substitute chemicals or alternative methods or lack thereof; engineering controls, administrative controls, and personal protective equipment currently in use or feasibly adoptable; and other risk-reduction approaches that may have already been adopted or considered for industrial and commercial uses. EPA conducted Federalism, Tribal, and Environmental Justice consultations and a Small Businesses Advocacy Review Panel. EPA's risk evaluation for CTC, describing CTC's conditions of use, is in docket EPA-HQ-OPPT-2019-0499, with the December 2022 unreasonable risk determination and additional information in docket EPA-HQ-OPPT-2016-0733.

**Statement of Need:** This rulemaking is needed to address the unreasonable risks of Carbon Tetrachloride (CTC) that were identified in a risk evaluation completed under TSCA section 6(b). EPA reviewed the exposures and hazards of Carbon Tetrachloride uses, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

**Summary of Legal Basis:** In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce; (2) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce for a particular use or for a particular use above a set concentration, or limit the amount of the substance which may

be manufactured, processed, or distributed in commerce for a particular use or for a particular use above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing by manufacturers or processors; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or regulate any manner or method of disposal for commercial purposes; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors, other persons, and the public and replace or repurchase the substance.

**Alternatives:** TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. TSCA section 6(c) requires that EPA consider one or more primary alternative regulatory actions as part of the development of a proposed rule under TSCA section 6(a). The proposed primary alternative regulatory action would implement workplace chemical protection program (WCPP) requirements, including requirements to meet an existing chemical exposure limit (ECEL) and Direct Dermal Contact Controls (DDCC) to prevent direct dermal contact in the workplace by separating, distancing, physically removing, or isolating all person(s) from direct handling of CTC or from contact with surfaces that may be contaminated with CTC (*i.e.*, equipment or materials on which CTC may be present) under routine conditions in the workplace, for those conditions of use that would otherwise be prohibited under the proposed rule. The primary alternative regulatory action would also require compliance with prescriptive controls—specifically requirements for respirators and dermal PPE—for those conditions of use where an ECEL and DDCC are the proposed regulatory action and where PPE may address the unreasonable risk. This approach differs from the proposed regulatory action because it would not require the use of elimination, substitution, engineering controls, and administrative controls, in accordance with the hierarchy of controls, to the extent feasible as a means of controlling inhalation and dermal exposures. The primary alternative regulatory action would apply the same recordkeeping requirements, downstream notification requirements, and compliance timeframes as those specified in the proposed rule.

**Anticipated Cost and Benefits:** EPA’s estimate of the incremental costs of the proposed rule is \$18.8 million per year

annualized over 20-years at a 3% discount rate and \$18.5 million per year at a 7% discount rate. The costs are estimated as incremental to baseline conditions, including current use of personal protective equipment. The costs represent a high-end cost estimate because the high estimates for the number of entities and workers affected by the regulation were used. To the extent that EPA’s approach overestimates the number of entities subject to the regulation, actual realized costs of this action will be lower. The monetized benefits of the proposed rule are from avoided cases of adrenal and liver cancers. The estimated monetized benefit of the proposed regulatory action ranges from approximately \$0.09 to \$0.1 million per year annualized over 20-years at a 3% discount rate and from \$0.04 to \$0.07 million per year at a 7% discount rate. There are also non-monetized benefits due to other potential avoided adverse health effects associated with CTC exposure, including liver, reproductive, renal, developmental, and central nervous system (CNS) toxicity endpoints.

**Risks:** As EPA determined in the TSCA section 6(b) risk evaluation, Carbon Tetrachloride presents unreasonable risks to human health. EPA must issue risk management requirements so that this chemical substance no longer presents an unreasonable risk. For more information, visit: <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca>.

**Timetable:**

Action	Date	FR Cite
NPRM .....	07/28/23	88 FR 49180
Final Rule .....	08/00/24	

**Regulatory Flexibility Analysis Required:** No.  
**Government Levels Affected:** Federal.  
**Federalism:** This action may have federalism implications as defined in E.O. 13132.  
**International Impacts:** This regulatory action will be likely to have international trade and investment effects, or otherwise be of international interest.  
**Additional Information:** EPA–HQ–OPPT–2020–0592.  
**Sectors Affected:** 325199 All Other Basic Organic Chemical Manufacturing; 325998 All Other Miscellaneous Chemical Product and Preparation Manufacturing; 327310 Cement Manufacturing; 325 Chemical Manufacturing; 325194 Cyclic Crude, Intermediate, and Gum and Wood

Chemical Manufacturing; 327992 Ground or Treated Mineral and Earth Manufacturing; 562211 Hazardous Waste Treatment and Disposal; 325120 Industrial Gas Manufacturing; 331410 Nonferrous Metal (except Aluminum) Smelting and Refining; 327 Nonmetallic Mineral Product Manufacturing; 325180 Other Basic Inorganic Chemical Manufacturing; 325320 Pesticide and Other Agricultural Chemical Manufacturing; 325110 Petrochemical Manufacturing; 325211 Plastics Material and Resin Manufacturing; 331 Primary Metal Manufacturing; 562213 Solid Waste Combustors and Incinerators; 562 Waste Management and Remediation Services.

**URL For More Information:** <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-carbon-tetrachloride>.

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**RIN:** 2070–AK82

**EPA—OCSPP**  
**213. Perchloroethylene (PCE); Regulation Under the Toxic Substances Control Act (TSCA) [2070–AK84]**

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

**Legal Authority:** 15 U.S.C. 2605 Toxic Substances Control Act  
**CFR Citation:** 40 CFR 751.

**Legal Deadline:** NPRM, Statutory, December 28, 2021, TSCA sec. 6(c). Final, Statutory, December 28, 2021, TSCA sec. 6(c).

**Abstract:** On June 16, 2023, EPA proposed a rule under the Toxic Substances Control Act (TSCA) to address the unreasonable risk of injury to health from perchloroethylene (PCE). TSCA requires that EPA address by rule any unreasonable risk identified in a TSCA risk evaluation and apply requirements to the extent necessary so the chemical no longer presents unreasonable risk. PCE is a widely used solvent in a variety of occupational and consumer applications including fluorinated compound production, petroleum manufacturing, dry cleaning,

and aerosol degreasing. EPA determined that PCE presents an unreasonable risk of injury to health due to the significant adverse health effects associated with exposure to PCE, including neurotoxicity effects from acute and chronic inhalation exposures and dermal exposures, and cancer from chronic inhalation exposures to PCE. TSCA requires that EPA address by rule any unreasonable risk of injury to health or the environment identified in a TSCA risk evaluation and apply requirements to the extent necessary so the chemical no longer presents unreasonable risk. PCE, also known as perc and tetrachloroethylene, is a neurotoxicant and a likely human carcinogen. Neurotoxicity, in particular impaired visual and cognitive function and diminished color discrimination, are the most sensitive adverse effects driving the unreasonable risk of PCE, and other adverse effects associated with exposure include central nervous system depression, kidney and liver effects, immune system toxicity, developmental toxicity, and cancer. To address the identified unreasonable risk, EPA proposed to prohibit most industrial and commercial uses of PCE; the manufacture (including import), processing, and distribution in commerce of PCE for the prohibited industrial and commercial uses; the manufacture (including import), processing, and distribution in commerce of PCE for all consumer use; and, the manufacture (including import), processing, distribution in commerce, and use of PCE in dry cleaning and related spot cleaning through a 10-year phaseout. For certain conditions of use that would not be subject to a prohibition, EPA also proposed to require a PCE workplace chemical protection program that includes requirements to meet an inhalation exposure concentration limit and prevent direct dermal contact. EPA also proposed to require prescriptive workplace controls for laboratory use, and to establish recordkeeping and downstream notification requirements. Additionally, EPA proposed to provide certain time-limited exemptions from requirements for certain critical or essential emergency uses of PCE for which no technically and economically feasible safer alternative is available. The Agency's development of this rule incorporated significant stakeholder outreach and public participation, including public webinars and over 40 external meetings as well as required Federalism, Tribal, and Environmental Justice consultations and a Small Businesses Advocacy Review Panel.

EPA's risk evaluation for PCE, describing the conditions of use is in docket EPA-HQ-OPPT-2019-0502, with the 2022 unreasonable risk determination and additional materials in docket EPA-HQ-OPPT-2016-0732.

*Statement of Need:* This rulemaking is needed to address the unreasonable risk from PCE that was identified in a risk evaluation completed under TSCA section 6(b). EPA reviewed the exposures and hazards of PCE, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

*Summary of Legal Basis:* In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce; (2) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce of the substance for a particular use or for a particular use above a set concentration, or limit the amount of the substance which may be manufactured, processed, or distributed in commerce for a particular use or for a particular use above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing by manufacturers or processors; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or regulate any manner or method of disposal for commercial purposes; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors, other persons and the public and replace or repurchase the substance.

*Alternatives:* TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. TSCA section 6(c) requires EPA to consider one or more primary

alternative regulatory actions as part of the development of a proposed rule under TSCA section 6(a). The primary alternative regulatory action for this rulemaking includes longer compliance timeframes and prohibits fewer uses than the proposed regulatory action. This primary alternative regulatory action would prohibit most industrial and commercial uses of PCE; prohibit the manufacture (including import), processing, and distribution in commerce of PCE for the prohibited industrial and commercial uses; prohibit the manufacture (including import), processing, and distribution in commerce of PCE for all consumer use; prohibit the manufacture (including import), processing, distribution in commerce, and use of PCE in dry cleaning and related spot cleaning through a 15-year phaseout; require prescriptive workplace controls for certain conditions of use; and require a workplace chemical protection program for certain conditions of use. The second alternative regulatory action for this rulemaking includes shorter compliance timeframes and prohibits more uses than the proposed regulatory action. This second alternative regulatory action would prohibit most industrial and commercial uses of PCE; prohibit the manufacture (including import), processing, and distribution in commerce of PCE for the prohibited industrial and commercial uses; prohibit the manufacture (including import), processing, and distribution in commerce of PCE for all consumer use; prohibit the manufacture (including import), processing, distribution in commerce, and use of PCE in dry cleaning and related spot cleaning through a 5-year phaseout; require a workplace chemical protection program that includes requirements to meet an inhalation exposure concentration limit and prevent direct dermal contact for certain conditions of use; require prescriptive workplace controls for laboratory use; and provide certain time-limited exemptions from requirements for several conditions of use of PCE that would otherwise significantly disrupt national security or critical infrastructure.

*Anticipated Cost and Benefits:* The monetized costs for this proposed rule are estimated to range from \$14.0 million annualized over 20 years at a 3% discount rate and \$14.3 million annualized over 20 years at a 7% discount rate. The monetized benefits are estimated to be \$10.2 to \$46.3 million annualized over 20 years at a 3% discount rate and \$4.72 million to \$29.4 million annualized over 20 years

at a 7% discount rate. EPA believes that the balance of costs and benefits of this proposal cannot be fairly described without considering the additional, non-monetized benefits of mitigating the non-cancer adverse effects. These effects may include neurotoxicity, kidney toxicity, liver toxicity, immunological and hematological effects, reproductive effects, and developmental effects.

**Risks:** EPA determined that PCE presents an unreasonable risk to human health. EPA must issue risk management requirements so that this chemical substance no longer presents an unreasonable risk. For more information, visit: <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-existing-chemicals-under-tsca>.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/16/23	88 FR 39652
NPRM Comment Period End.	08/15/23	
Final Rule .....	07/00/24	

**Regulatory Flexibility Analysis Required:** Yes.  
**Small Entities Affected:** Businesses.  
**Government Levels Affected:** Federal, State.  
**Federalism:** This action may have federalism implications as defined in E.O. 13132.

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

**Additional Information:** EPA–HQ–OPPT–2020–0720.

**Sectors Affected:** 325 Chemical Manufacturing.

**URL For More Information:** <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-perchloroethylene>.

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RIN: 2070–AK84

**EPA—OCSPP**  
**214. Asbestos Part 1 (Chrysotile Asbestos); Regulation of Certain Conditions of Use Under the Toxic Substances Control Act (TSCA) [2070–AK86]**

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

**Unfunded Mandates:** This action may affect the private sector under Public Law 104–4.

**Legal Authority:** 15 U.S.C. 2605 Toxic Substances Control Act

**CFR Citation:** 40 CFR 751.

**Legal Deadline:** NPRM, Statutory, December 28, 2021, TSCA sec. 6(c).

Final, Statutory, December 28, 2022, TSCA sec. 6(c).

**Abstract:** This action will address the unreasonable risk of injury to health presented by conditions of use of chrysotile asbestos. Section 6(a) of the Toxic Substances Control Act (TSCA) requires that EPA address by rule any unreasonable risk identified in a TSCA risk evaluation and apply requirements to the extent necessary so that the relevant chemical substance no longer presents such risk. Therefore, to address the unreasonable risk identified in the TSCA Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos, EPA proposed on April 12, 2022, to prohibit manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos for chrysotile asbestos diaphragms for use in the chlor-alkali industry, chrysotile asbestos-containing sheet gaskets used in chemical production, chrysotile asbestos-containing brake blocks used in the oil industry, aftermarket automotive chrysotile asbestos-containing brakes/linings, other chrysotile asbestos-containing vehicle friction products, and other chrysotile asbestos-containing gaskets. EPA also proposed to prohibit manufacture (including import), processing, and distribution in commerce of aftermarket automotive chrysotile asbestos-containing brakes/linings for consumer use, and other chrysotile asbestos-containing gaskets for consumer use. Finally, EPA also proposed disposal and recordkeeping requirements for these conditions of use. EPA is reviewing the comments received and intends to develop a final rule.) EPA consulted with State, local and Tribal governments, and conducted extensive public outreach during the development of this rulemaking. EPA held discussions with industry, non-governmental organizations, other national governments, asbestos experts, other government agencies, users of chrysotile asbestos, and the general

public on how long industry would need to implement a prohibition. These meetings helped to inform the timeline for implementation of a prohibition, EPA’s understanding of how companies currently protect workers and the extent to which each industry uses asbestos-free technology. EPA also held a public webinar to provide an overview of the TSCA risk management process including the findings in the Part 1 risk evaluation. In addition, EPA published a notice of data availability on March 17, 2023 to solicit public comments on additional data received by EPA related to the proposed rule. The additional data pertain to chrysotile asbestos diaphragms used in the chlor-alkali industry and chrysotile asbestos-containing sheet gaskets used in chemical production and may be used by EPA in the development of the final rule, including EPA’s determination of what constitutes as soon as practicable” with regard to the proposed chrysotile asbestos prohibition compliance dates for these uses. EPA is reviewing the comments received and intends to develop a final rule.

**Statement of Need:** This rulemaking is needed to address the unreasonable risk of chrysotile asbestos identified in the Risk Evaluation for Asbestos Part I: Chrysotile Asbestos completed under TSCA section 6(b). EPA reviewed the exposures and hazards of the chrysotile asbestos uses evaluated in the risk evaluation, the magnitude of risk, exposed populations, severity of the hazard, uncertainties, and other factors. EPA sought input from the public and peer reviewers as required by TSCA and associated regulations.

**Summary of Legal Basis:** In accordance with TSCA section 6(a), if EPA determines in a final risk evaluation completed under TSCA 6(b) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, the Agency must issue regulations requiring one or more of the following actions to the extent necessary so that the chemical substance no longer presents an unreasonable risk: (1) Prohibit or otherwise restrict manufacture, processing, or distribution in commerce; (2) Prohibit or otherwise restrict for a particular use or above a set concentration; (3) Require minimum warnings and instructions with respect to use, distribution in commerce, or disposal; (4) Require recordkeeping or testing; (5) Prohibit or regulate any manner or method of commercial use; (6) Prohibit or regulate any manner or

method of disposal; and/or (7) Direct manufacturers or processors to give notice of the unreasonable risk to distributors and replace or repurchase products if required.

**Alternatives:** TSCA section 6(a) requires EPA to address by rule chemical substances that the Agency determines present unreasonable risk upon completion of a final risk evaluation. As required under TSCA section 6(c), EPA considered one or more primary alternative regulatory actions as part of the development of the proposed rule. The primary alternative regulatory action considered by EPA in the proposed rule is to: prohibit manufacture (including import), processing, distribution in commerce and commercial use of chrysotile asbestos in bulk form or as part of: Chrysotile asbestos diaphragms in the chlor-alkali industry and for chrysotile asbestos-containing sheet gaskets in chemical production (with prohibitions taking effect five years after the effective date of the final rule) and require, prior to the prohibition taking effect, compliance with an existing chemicals exposure limit (ECEL) for the processing and commercial use of chrysotile asbestos for these uses; and to prohibit manufacture (including import), processing, distribution in commerce, and commercial use of chrysotile asbestos-containing brake blocks in the oil industry; aftermarket automotive chrysotile asbestos-containing brakes/linings; and other vehicle friction products (with prohibitions taking effect two years after the effective date of the final rule and with additional requirements for disposal). The primary alternative regulatory action considered in the proposed rule also included prohibitions on manufacture (including import), processing, and distribution in commerce of aftermarket automotive chrysotile asbestos-containing brakes/linings for consumer use and other chrysotile asbestos-containing gaskets for consumer use (with prohibitions taking effect two years after the effective date of the final rule). The primary alternative regulatory action also would require disposal of chrysotile asbestos-containing materials in a manner identical to the proposed option, with additional provisions for downstream notification and signage and labeling. EPA did not consider additional alternative regulatory actions in the proposed rule.

**Anticipated Cost and Benefits:** As estimated in the proposed rule, converting the asbestos diaphragm cells to membrane cells in response to the proposed rule is predicted to require an incremental investment of

approximately \$1.8 billion across all nine plants predicted to be using asbestos diaphragms when the rule goes into effect. Compared to this baseline trend, the incremental net effect of the proposed rule on the chlor-alkali industry over a 20-year period using a 3 percent discount rate is estimated to range from an annualized cost of about \$49 million per year to annualized savings of approximately \$35 million per year, depending on whether the higher grade of caustic soda produced by membrane cells continues to command a premium price. Using a 7 percent discount rate, the incremental annualized net effect ranges from a cost of \$87 million per year to savings of approximately \$40,000 per year, again depending on whether there are revenue gains from the caustic soda production. EPA also estimates that approximately 1,800 sets of automotive brakes or brake linings containing asbestos may be imported into the U.S. each year, representing 0.002% of the total U.S. market for aftermarket brakes. The cost of a prohibition would be minimal due to the ready availability of alternative products that are only slightly more expensive (an average cost increase of \$4 per brake). The proposed rule is estimated to result in total annualized costs for aftermarket automotive brakes of approximately \$25,000 per year using a 3% discount rate and \$18,000 per year using a 7% discount rate. EPA did not have information to estimate the costs of prohibiting asbestos for the remaining uses subject to the proposed rule (sheet gaskets used in chemical production, brake blocks in the oil industry, other vehicle friction products, or other gaskets), so there are additional unquantified costs. EPA believes that the use of these asbestos-containing products has declined over time, and that they are now used in at most small segments of the industries. EPA's Economic Analysis for the proposed rule quantified the benefits from avoided cases of lung cancer, mesothelioma, ovarian cancer, and laryngeal cancer due to reduced asbestos exposures to workers, occupational non-users (ONUs), and DIYers related to the rule's requirements for chlor-alkali diaphragms, sheet gaskets for chemical production, and aftermarket brakes. The combined national quantified benefits of avoided cancer cases associated with these products are approximately \$3,100 per year using a 3% discount rate and \$1,200 per year using a 7% discount rate, based on the cancer risk estimates from the Part 1 risk evaluation. EPA did not estimate the aggregate benefits of the

requirements for oilfield brake blocks, other vehicle friction products or other gaskets because the Agency did not have sufficient information on the number of individuals likely to be affected by the proposed rule. Thus, as proposed, the rule may yield additional unquantified benefits from reducing exposures associated with these uses. There would also be unquantified benefits due to other avoided adverse health effects associated with asbestos exposure including respiratory effects (e.g., asbestosis, non-malignant respiratory disease, deficits in pulmonary function, diffuse pleural thickening and pleural plaques) and immunological and lymphoreticular effects. In addition to the benefits of avoided adverse health effects associated with chrysotile asbestos exposure, the proposed rule is expected to generate significant benefits from reduced air pollution associated with electricity generation. Based on a sensitivity screening-level analysis that EPA conducted, converting asbestos diaphragm cells to membrane cells could yield tens of millions of dollars per year in environmental and health benefits from reduced emissions of particulate matter, sulfur dioxide, nitrogen oxides, and carbon dioxide.

**Risks:** In the TSCA Risk Evaluation for Asbestos, Part 1: Chrysotile Asbestos, EPA determined there is unreasonable risk of injury to health from conditions of use of chrysotile asbestos. The health endpoint driving EPA's determination of unreasonable risk for chrysotile asbestos under the conditions of use is cancer from inhalation exposure. This unreasonable risk includes the risk of mesothelioma, lung cancer, and other cancers from chronic inhalation.

#### *Timetable:*

Action	Date	FR Cite
NPRM .....	04/12/22	87 FR 21706
Notice of Data Availability.	03/17/23	88 FR 16389
Final Rule .....	01/00/24	

#### *Regulatory Flexibility Analysis*

**Required:** No.

**Small Entities Affected:** Businesses.

**Government Levels Affected:** Federal.

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

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

**Additional Information:** EPA-HQ-OPPT-2021-0057.

**Sectors Affected:** 8111 Automotive Repair and Maintenance; 325 Chemical

Manufacturing; 332 Fabricated Metal Product Manufacturing; 339991 Gasket, Packing, and Sealing Device Manufacturing; 4231 Motor Vehicle and Motor Vehicle Parts and Supplies Merchant Wholesalers; 441 Motor Vehicle and Parts Dealers; 211 Oil and Gas Extraction; 336 Transportation Equipment Manufacturing.

*URL For More Information:* <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-management-asbestos-part-1-chrysotile-asbestos>.

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*RIN:* 2070-AK86

## EPA—OCSPP

### 215. Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post Abatement Clearance Levels [2070-AK91]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

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

*Legal Authority:* 15 U.S.C. 2681; 15 U.S.C. 2682; 15 U.S.C. 2683; 15 U.S.C. 2684; 15 U.S.C. 2686; 42 U.S.C. 4851b; 42 U.S.C. 4852d

*CFR Citation:* 40 CFR 745.

*Legal Deadline:* None.

*Abstract:* Addressing childhood lead exposure is a priority for the Environmental Protection Agency (EPA). This rule addresses health concerns for all affected communities, including children living in communities with environmental justice concerns, who have significantly higher blood lead levels (BLLs) than other children. As part of EPA's efforts to reduce childhood lead exposure, and in accordance with a U.S. Court of Appeals for the Ninth Circuit 2021 opinion, EPA proposed to lower the dust-lead hazard standards (DLHS) from 10 micrograms per square foot ( $\mu\text{g}/\text{ft}^2$ ) and 100  $\mu\text{g}/\text{ft}^2$  for floors and window sills to any reportable level as analyzed by a laboratory recognized by EPA's National Lead Laboratory Accreditation Program. This is a non-numeric value that the

Agency refers to as greater than zero  $\mu\text{g}/\text{ft}^2$  and may vary based on laboratory or test. While EPA's DLHS do not compel property owners or occupants to evaluate their property for lead-based paint (LBP) hazards nor take control actions (40 CFR 745.61(c)), if an LBP activity such as an abatement is performed, then EPA's regulations set requirements for doing so (40 CFR 745.220(d)). EPA also proposed to change the dust-lead clearance levels (DLCL), which are the values used to determine when abatement work can be considered complete, from 10  $\mu\text{g}/\text{ft}^2$ , 100  $\mu\text{g}/\text{ft}^2$  and 400  $\mu\text{g}/\text{ft}^2$  for floors, window sills, and window troughs to 3  $\mu\text{g}/\text{ft}^2$ , 20  $\mu\text{g}/\text{ft}^2$ , and 25  $\mu\text{g}/\text{ft}^2$ , respectively. Under this proposal, the DLHS for floors and window sills would not be the same as the DLCL for floors and window sills (*i.e.*, the DLHS and DLCL would be decoupled). Accordingly, dust-lead hazards could remain after an abatement due to the different statutory direction that Congress provided EPA with respect to the DLCL. Additionally, EPA proposed to change the definition of abatement so that the recommendation for action applies when dust-lead loadings are at or above the DLCL, as well as several other amendments, including revising the definition of target housing to conform with the statute. The Agency consulted with State, local and Tribal government officials during the rulemaking, and held a public webinar in summer of 2023.

*Statement of Need:* On July 9, 2019, EPA promulgated a final rule to lower the DLHS from 40 micrograms of lead per square foot ( $\mu\text{g}/\text{ft}^2$ ) 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 began a reconsideration of the July 2019 and January 2021 final rules in keeping with Executive Order 13990 (addressing the protection of public health and the environment and restoring science to tackle the climate crisis). In addition, on May 14, 2021, the United States Court of Appeals for the Ninth Circuit issued an opinion to remand without vacatur the 2019 DLHS final rule and directed EPA to reconsider the 2019 DLHS rule in conjunction with a reconsideration of the DLCL. EPA proposed its reconsideration rule on August 1, 2023.

*Summary of Legal Basis:* EPA proposed this rule under the authority

of sections 401, 402, 403, 404, and 406 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.*, as amended by Title X of the Housing and Community Development Act of 1992 (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992 or "Title X") (Pub. L. 102-550), and section 237(c) of Title II of Division K of the Consolidated Appropriations Act, 2017 (Pub. L. 115-31), as well as sections 1004 and 1018 of Title X (42 U.S.C. 4851b, 4852d), as amended by section 237(b) of Title II of Division K of the Consolidated Appropriations Act, 2017.

*Alternatives:* EPA considered 2 alternative approaches for revising the DLHS and 1 alternative approach for revising the DLCL. One of the alternative approaches for revising the DLHS is a numeric standard based on the probability of exceedance of one or more IQ or BLL metrics as determined by the Agency. The other alternative approach for revising the DLHS would use the background dust-lead levels of housing built in 1978 and beyond as the DLHS (known as "post-1977 background"). For the numeric standard approach, EPA evaluated several numeric DLHS candidates that the Agency believed to be appropriate given the health and exposure metrics of interest. The numeric DLHS candidates were 1/10  $\mu\text{g}/\text{ft}^2$  (*i.e.*, 1  $\mu\text{g}/\text{ft}^2$  for floors and 10  $\mu\text{g}/\text{ft}^2$  for sills), 2/20  $\mu\text{g}/\text{ft}^2$ , 3/30  $\mu\text{g}/\text{ft}^2$ , and 5/40  $\mu\text{g}/\text{ft}^2$  and those values were compared to the specified BLL and IQ metrics to estimate the probability of exceeding the BLL or IQ targets. The post-1977 background approach would establish the DLHS for target housing and COFs using post-1977 background dust-lead levels, and address disparities in the dust-lead levels that children in target housing may be exposed to and the corresponding disparate health risks. This approach would also align with the focus of Title X on lead hazards in housing constructed before 1978. Using this approach, DLHS would be established at 0.2  $\mu\text{g}/\text{ft}^2$  for floors and 0.8  $\mu\text{g}/\text{ft}^2$  for window sills as the dust-lead levels that would result in adverse human health effects. The alternative approach EPA considered for revising the DLCL would be to employ the current enforceable levels established by the New York City Department of Health and Mental Hygiene of 5  $\mu\text{g}/\text{ft}^2$  for floors, 40  $\mu\text{g}/\text{ft}^2$  for window sills and 100  $\mu\text{g}/\text{ft}^2$  for window troughs.

*Anticipated Cost and Benefits:* EPA analyzed the potential incremental impacts associated with this rulemaking. The analysis focused specifically on the subset of target



housing and child-occupied facilities affected by this rulemaking. Although the DLHS and DLCL do not compel specific actions under the LBP Activities Rule to address identified LBP hazards, the DLHS and DLCL are directly incorporated by reference into certain requirements mandated by HUD in the housing subject to HUD's Lead Safe Housing Rule (LSHR). As such, the analysis estimates incremental costs and benefits for two categories of events: (1) where dust-wipe testing occurs to comply with the LSHR and (2) where dust wipe testing occurs in response to blood lead testing that detects a blood lead level (BLL) above state or Federal action levels. This rule would result in reduced exposure to lead, yielding benefits to residents of pre-1978 housing from avoided adverse health effects. For the subset of adverse health effects that were quantified (*i.e.*, the effect of avoided IQ decreases on lifetime earnings as an indicator of improved cognitive function), the estimated monetized and annualized benefits are \$1.069 billion to \$4.684 billion per year using a 3% discount rate, and \$231 million to \$1.013 billion per year using a 7% discount rate. These benefits calculations are sensitive to the discount rate used and the range in the estimated number of lead hazard reduction events triggered by children with tested BLLs above state or Federal action levels. With respect to the latter, the wide range is driven largely by uncertainty about the BLLs at which action might be taken, since in many states the action level is currently higher than the Federal blood lead reference value. Additionally, there are unquantified benefits. These additional benefits include avoided adverse health effects in children, including decreased attention-related behavioral problems, decreased cognitive performance, reduced post-natal growth, delayed puberty, and decreased kidney function. These additional unquantified benefits also include avoided adverse health effects in adults, including cardiovascular mortality and impacts on reproductive function and outcomes. This rule is estimated to result in quantified costs of \$536 million to \$784 million per year using both a 3% and a 7% discount rate. These costs are expected to accrue to landlords, owners and operators of child-occupied facilities, residential remodelers, and abatement firms. Real estate agents and brokers may incur negligible costs related to the target housing definition amendment. The cost calculations are highly sensitive to the range in the estimated number of lead hazard

reduction events triggered by children with elevated BLLs. In the events affected by this rule, incremental costs can be incurred for specialized cleaning used to reduce dust-lead loadings (*i.e.*, quantity of lead per unit of surface area) to below the clearance levels. In some instances, floors will also be sealed, overlaid, or replaced, or window sills will be sealed or repainted. Additional costs may result from the retesting of lead dust levels. Because of the lower laboratory reporting limits necessary for testing lead dust levels under this rule, incremental laboratory test costs are likely to increase.

**Risks:** This rulemaking addresses the risk of adverse health effects associated with dust-lead exposures in children living in pre-1978 housing and child-occupied facilities, as well as associated potential health effects in this subpopulation.

**Timetable:**

Action	Date	FR Cite
NPRM .....	08/01/23	88 FR 50444
Final Rule .....	10/00/24	

**Regulatory Flexibility Analysis**

**Required:** Undetermined.

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

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

**Additional Information:** Related to RIN 2070-AK66.

**Sectors Affected:** 92511

Administration of Housing Programs; 541350 Building Inspection Services; 624410 Child Day Care Services; 236 Construction of Buildings; 611110 Elementary and Secondary Schools; 541330 Engineering Services; 531110 Lessors of Residential Buildings and Dwellings; 92811 National Security; 611519 Other Technical and Trade Schools; 531 Real Estate; 562910 Remediation Services; 531311 Residential Property Managers; 238 Specialty Trade Contractors; 541380 Testing Laboratories.

**URL For More Information:** <https://www.epa.gov/lead>.

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RIN: 2070-AK91

**EPA—OFFICE OF LAND AND EMERGENCY MANAGEMENT (OLEM)**

Final Rule Stage

**216. Designating PFOA and PFOS as CERCLA Hazardous Substances [2050-AH09]**

**Priority:** Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

**Legal Authority:** 42 U.S.C. 9602

**CFR Citation:** 40 CFR 302.

**Legal Deadline:** None.

**Abstract:** Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA" or "Superfund"), the Environmental Protection Agency (EPA or the Agency) is moving to finalize the designation of perfluorooctanoic acid (PFOA) and perfluoro octane sulfonic acid (PFOS), including their salts and structural isomers, as hazardous substances. CERCLA authorizes the Administrator to promulgate regulations designating as hazardous substances such elements, compounds, mixtures, solutions, and substances which, when released into the environment, may present substantial danger to the public health or welfare or the environment. Such a designation would ultimately facilitate cleanup of contaminated sites and reduce human exposure to these "forever" chemicals.

**Statement of Need:** Designating PFOA and PFOS as CERCLA hazardous substances will require reporting of releases of PFOA and PFOS that meet or exceed the reportable quantity assigned to these substances. This will enable Federal, State, Tribal and local authorities to collect information regarding the location and extent of releases.

**Summary of Legal Basis:** No aspect of this action is required by statute or court order.

**Alternatives:** The Agency identified through the 2019 PFAS Action Plan that one of the goals was to designate PFOA and PFOS as hazardous substances. EPA determined that we have enough information to propose this designation.

**Anticipated Cost and Benefits:** The EPA is analyzing the potential costs and benefits associated with this action with respect to the reporting of any release of the subject hazardous substances to the Federal, State, and local authorities. Currently EPA expects to estimate lower and upper-bound reporting cost scenarios.

**Risks:** This is a reporting rule and will enable Federal, State, Tribal and local authorities to collect information regarding the location and extent of releases.

**Timetable:**

Action	Date	FR Cite
NPRM .....	09/06/22	87 FR 54415
NPRM Comment Period End.	11/07/22	
Final Rule .....	03/00/24	

**Regulatory Flexibility Analysis**

**Required:** No.

**Small Entities Affected:** Businesses, Governmental Jurisdictions, Organizations.

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

**Additional Information:**

**Sectors Affected:** 325998 All Other Miscellaneous Chemical Product and Preparation Manufacturing; 811192 Car Washes; 314110 Carpet and Rug Mills; 332813 Electroplating, Plating, Polishing, Anodizing, and Coloring; 922160 Fire Protection; 488119 Other Airport Operations; 325510 Paint and Coating Manufacturing; 322121 Paper (except Newsprint) Mills; 322130 Paperboard Mills; 424710 Petroleum Bulk Stations and Terminals; 324110 Petroleum Refineries; 325992 Photographic Film, Paper, Plate, and Chemical Manufacturing; 562212 Solid Waste Landfill.

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**RIN:** 2050-AH09

**EPA—OLEM**

**217. Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy Surface Impoundments [2050-AH14]**

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

**Legal Authority:** 42 U.S.C. 6907(a); 42 U.S.C. 6912(a); 42 U.S.C. 6944; 42 U.S.C. 6945(a)(d)

**CFR Citation:** 40 CFR 257.

**Legal Deadline:** None.

**Abstract:** On April 17, 2015, the Environmental Protection Agency (EPA or the Agency) promulgated national minimum criteria for existing and new coal combustion residuals (CCR) landfills and existing and new CCR surface impoundments. On August 21, 2018, the D.C. Circuit Court of Appeals issued its opinion in the case of *Utility Solid Waste Activities Group, et al v. EPA*, which vacated and remanded the provision that exempted inactive impoundments at inactive facilities from the CCR rule. In May 2023, EPA proposed regulations to implement this part of the court decision for inactive CCR surface impoundments at inactive utilities, or “legacy CCR surface impoundments”. This proposal included adding a new definition for legacy CCR surface impoundments. EPA also proposed to require such legacy CCR surface impoundments to follow existing regulatory requirements for fugitive dust, groundwater monitoring, and closure, or other technical requirements. Finally, EPA proposed requirements for CCR management units including a facility evaluation and to follow existing regulatory requirements for groundwater monitoring, corrective action, and closure for all CCR contamination (regardless of how or when that CCR was placed) at a regulated facility. After reviewing the public comments on the proposed rule, EPA will take final action.

**Statement of Need:** On April 17, 2015, the EPA finalized national regulations to regulate the disposal of Coal Combustion Residuals (CCR) as solid waste under subtitle D of the Resource Conservation and Recovery Act (RCRA) (2015 CCR final rule). In response to the *Utility Solid Waste Activities Group v. EPA* decision, this proposed rulemaking, if finalized, would bring inactive surface impoundments at inactive facilities (legacy surface impoundments) into the regulated universe.

**Summary of Legal Basis:** No statutory or judicial deadlines apply to this rule. The EPA is taking this action in response to an August 21, 2018, court decision that vacated and remanded the provision that exempted inactive impoundments at inactive electric utilities from the 2015 CCR final rule. The proposed rule would be established under the authority of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and the Water Infrastructure Improvements for the Nation Act of 2016.

**Alternatives:** The Agency issued an advance notice of proposed rulemaking (ANPRM) on October 14, 2020 (85 FR 65015), which included public notice and opportunity for comment on this effort. We have not identified at this time any significant alternatives for analysis.

**Anticipated Cost and Benefits:** The Agency will determine anticipated costs and benefits later as it is currently too early in the process.

**Risks:** The Agency will estimate the risk reductions and impacts later as it is currently too early in the process.

**Timetable:**

Action	Date	FR Cite
ANPRM .....	10/14/20	85 FR 65015
NPRM .....	05/18/23	88 FR 31982
NPRM Comment Period End.	07/17/23	
Final Rule .....	04/00/24	

**Regulatory Flexibility Analysis**

**Required:** Undetermined.

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

**Additional Information:** EPA-HQ-OLEM-2020-0107.

**Sectors Affected:** 221112 Fossil Fuel Electric Power Generation.

**URL For More Information:** <https://www.epa.gov/coalash>.

**URL For Public Comments:** <https://www.regulations.gov/docket/EPA-HQ-OLEM-2020-0107>.

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**RIN:** 2050-AH14

**EPA—OLEM**

**218. Clean Water Act Hazardous Substance Facility Response Plans [2050-AH17]**

**Priority:** Other Significant.

**Legal Authority:** 33 U.S.C. 1321

**CFR Citation:** 40 CFR 142, subpart B.

**Legal Deadline:** NPRM, Judicial, March 12, 2022, 19-cv-02516-VM. A March 12, 2020, consent decree requires EPA to sign a proposed rule within 24 months (by 3/12/2022) and sign a final rule within 30 months of publication of the proposed rule.

Final, Judicial, September 30, 2024, 19–cv–02516–VM. Requires EPA to sign a proposed rule within 24 months (by 3/12/2022) and sign a final rule within 30 months of publication of the proposed rule (estimating by 9/30/2024).

**Abstract:** The Clean Water Act (CWA) provides that regulations shall be issued “which require an owner or operator of a tank vessel or facility . . . to prepare and submit . . . a plan for responding, to the maximum extent practicable, to a worst-case discharge, and to a substantial threat of such a discharge, of . . . a hazardous substance.” EPA was sued for failure to fulfill this mandatory duty imposed by Congress. This regulatory action is being conducted under the terms of a consent decree entered into on March 12, 2020, which requires that a proposed action is signed within 24 months of the final agreement and that a final action follow within 30 months of the publication of the proposed rule. Subsequently, the Environmental Protection Agency proposed a regulatory action to require planning for worst case discharges of CWA hazardous substances under section 311(j)(5)(A). EPA plans to promulgate a final rule by Spring 2024 meet the terms of the Consent Decree.

**Statement of Need:** Worst case discharges of CWA hazardous substances could result in impacts to drinking water; impacts to industrial and agricultural water uses; commercial and recreational waterway closures; impacts to fish and other aquatic life; impacts to ecosystems and the environment; injuries, hospitalizations, and fatalities; emergency response costs; transaction costs; direct property impacts; property value impacts; costs from sheltering in place and evacuations; impacts to sensitive or vulnerable populations; and fiscal revenue impacts. The purpose of this regulation would be to plan for and mitigate these damages.

**Summary of Legal Basis:** CWA Section 311(j)(5) directs the president to issue regulations to “require an owner or operator of a tank vessel or facility . . . to prepare and submit . . . a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of . . . a hazardous substance.” The EPA was sued for not promulgating the hazardous substance worst case planning regulations and entered into a consent decree with the plaintiffs that requires the EPA to publish a proposed rule by March 12, 2022 and take final action by September 12, 2024.

**Alternatives:** The EPA is considering a regulatory program modeled on EPA’s

Facility Response Plan program for worst case discharges of oil.

**Anticipated Cost and Benefits:** The Agency will determine anticipated costs and benefits later as it is currently too early in the process.

**Risks:** To help determine the risks to be addressed by this rulemaking, EPA is reviewing historical data on discharges of CWA hazardous substances.

**Timetable:**

Action	Date	FR Cite
NPRM .....	03/28/22	87 FR 17890
Final Rule .....	04/00/24	

**Regulatory Flexibility Analysis Required:** Undetermined.

**Government Levels Affected:** Local, Tribal.

**Additional Information:**

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**RIN:** 2050–AH17

## EPA—OLEM

### 219. Accidental Release Prevention Requirements: Risk Management Program Under the Clean Air Act; Safer Communities by Chemical Accident Prevention [2050–AH22]

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

**Unfunded Mandates:** Undetermined.

**Legal Authority:** 42 U.S.C. 7412

**CFR Citation:** 40 CFR 68.

**Legal Deadline:** None.

**Abstract:** On August 31, 2022, the Environmental Protection Agency (EPA) published proposed amendments to its Risk Management Program (RMP) regulations as a result of Agency review. The proposed revisions included several changes and amplifications to the accident prevention program requirements, enhancements to the emergency preparedness requirements, increased public availability of chemical hazard information, and several other changes to certain regulatory definitions or points of clarification. Such amendments seek to improve chemical process safety; assist in planning, preparedness, and responding to RMP-reportable accidents; and improve public awareness of chemical hazards at regulated sources. EPA plans to publish the final rule in December 2023.

**Statement of Need:** On January 13, 2017, the EPA published a final RMP

rule (2017 Amendments) to prevent and mitigate the effect of accidental releases of hazardous chemicals from facilities that use, manufacture, and store them. The 2017 Amendments were a result of Executive Order 13650, Improving Chemical Facility Safety and Security, which directed EPA (and several other Federal agencies) to, among other things, modernize policies, regulations, and standards to enhance safety and security in chemical facilities. The 2017 Amendments rule contained various new provisions applicable to RMP-regulated facilities addressing prevention program elements, emergency coordination with local responders, and information availability to the public. EPA received three petitions for reconsideration of the 2017 Amendments rule under CAA section 307(d)(7)(B). On December 19, 2019, EPA promulgated a final RMP rule (2019 Revisions) that acts on the reconsideration. The 2019 Revisions rule repealed several major provisions of the 2017 Amendments and retained other provisions with modifications. On January 20, 2021, Executive Order 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis (E.O. 13990), directed federal agencies to review existing regulations and take action to address priorities established by the new administration including bolstering resilience to the impact of climate change and prioritizing environmental justice. The EPA is considering developing a regulatory action to revise the current RMP regulations. The proposed rule would address the administration’s priorities and focus on regulatory revisions completed since 2017. The proposed rule would also expect to contain a number of proposed modifications to the RMP regulations based in part on stakeholder feedback received from RMP public listening sessions held on June 16 and July 8, 2021.

**Summary of Legal Basis:** The CAA section 112(r)(7)(A) authorizes the EPA Administrator to promulgate accidental release prevention, detection, and correction requirements, which may include monitoring, record keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements. The CAA section 112(r)(7)(B) authorizes the Administrator to promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to

such releases by the owners or operators of the sources of such releases.

*Alternatives:* The EPA currently plans to prepare a notice of proposed rulemaking that would provide the public an opportunity to comment on the proposal, and any regulatory alternatives that may be identified within the preamble to the proposed rulemaking.

*Anticipated Cost and Benefits:* Costs may include the burden on regulated entities associated with implementing new or revised requirements including program implementation, training, equipment purchases, and recordkeeping, as applicable. Some costs could also accrue to implementing agencies and local governments, due to new or revised provisions associated with emergency response. Benefits will result from avoiding the harmful accident consequences to communities and the environment, such as deaths, injuries, and property damage, environmental damage, and from mitigating the effects of releases that may occur. Similar benefits will accrue to regulated entities and their employees.

*Risks:* The proposed action would address the risks associated with accidental releases of listed regulated toxic and flammable substances to the air from stationary sources. Substances regulated under the RMP program include highly toxic and flammable substances that can cause deaths, injuries, property and environmental damage, and other on- and off-site consequences if accidentally released. The proposed action would reduce these risks by potentially making accidental releases less likely, and by mitigating the severity of releases that may occur. The proposed action would not address the risks of non-accidental chemical releases, accidental releases of non-regulated substances, chemicals released to other media, and air releases from mobile sources.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/31/22	87 FR 53556
NPRM Comment Period End.	10/31/22	
Final Rule .....	12/00/23	

*Regulatory Flexibility Analysis Required:* Undetermined.

*Government Levels Affected:* Undetermined.

*Sectors Affected:* 325 Chemical Manufacturing; 49313 Farm Product Warehousing and Storage; 42491 Farm Supplies Merchant Wholesalers; 311511 Fluid Milk Manufacturing; 311 Food

Manufacturing; 221112 Fossil Fuel Electric Power Generation; 311411 Frozen Fruit, Juice, and Vegetable Manufacturing; 49311 General Warehousing and Storage; 31152 Ice Cream and Frozen Dessert Manufacturing; 311612 Meat Processed from Carcasses; 211112 Natural Gas Liquid Extraction; 32519 Other Basic Organic Chemical Manufacturing; 42469 Other Chemical and Allied Products Merchant Wholesalers; 49319 Other Warehousing and Storage; 322 Paper Manufacturing; 42471 Petroleum Bulk Stations and Terminals; 32411 Petroleum Refineries; 311615 Poultry Processing; 49312 Refrigerated Warehousing and Storage; 22132 Sewage Treatment Facilities; 11511 Support Activities for Crop Production; 22131 Water Supply and Irrigation Systems.

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*RIN:* 2050-AH22

EPA—OFFICE OF WATER (OW)

Final Rule Stage

220. Federal Baseline Water Quality Standards for Indian Reservations [2040-AF62]

*Priority:* Other Significant.

*Legal Authority:* 33 U.S.C.

1313(c)(4)(B)

*CFR Citation:* 40 CFR 131.

*Legal Deadline:* None.

*Abstract:* On April 27, 2023, the Environmental Protection Agency (EPA) Administrator signed a proposed rule to establish water quality standards (WQS) for waters on Indian reservations that do not have WQS under the Clean Water Act (CWA). This rule will help advance President Biden’s commitment to strengthening the nation-to-nation relationships with Indian country. Fifty years after enactment of the CWA, over 80% of Indian reservations do not have this foundational CWA protection for their waters. Addressing this lack of CWA-effective WQS for the waters of more than 250 Indian reservations is a priority for EPA, given that WQS are central to implementing the water quality framework of the CWA. Promulgating baseline WQS would provide more scientific rigor and regulatory certainty to National Pollutant Discharge Elimination System (NPDES) permits for discharges to these waters. Consistent with EPA’s

regulations, the baseline WQS include designated uses, water quality criteria to protect those uses, and antidegradation policies to protect high quality waters. EPA consulted with tribes in the summer of 2021 during the pre-proposal phase and in the summer of 2023, concurrent with the public comment period associated with the proposal.

*Statement of Need:* The Federal government has recognized 574 tribes. More than 300 of these tribes have reservation lands and are eligible to apply for “treatment in a similar manner as a state” (TAS) to administer a WQS program. Only 84 tribes, out of over 300 tribes with reservations, currently have such TAS authorization to administer a WQS program. Of these 84 tribes, only 47 tribes to date have adopted WQS and submitted them to EPA for review and approval under the Clean Water Act (CWA). As a result, 50 years after enactment of the CWA, over 80% of Indian reservations do not have this foundational protection expected by Congress as laid out in the CWA for their waters. Addressing this lack of CWA-effective WQS for the waters of more than 250 Indian reservations is a priority for EPA, given that WQS are central to implementing the water quality framework of the CWA. Although it is EPA’s preference for tribes to obtain TAS and develop WQS tailored to the tribes’ individual environmental goals and reservation waters, EPA’s promulgation of baseline WQS would serve to safeguard water quality until tribes obtain TAS and adopt and administer CWA WQS themselves.

*Summary of Legal Basis:* While CWA section 303 clearly contemplates WQS for all waters of the United States, it does not explicitly address WQS for Indian country waters where tribes lack CWA-effective WQS. Under CWA section 303(a) states were required to adopt WQS for all interstate and intrastate waters. Where a state does not establish such standards, Congress directed EPA to do so under the CWA section 303(b). These provisions are consistent with Congress’ design of the CWA as a general statute applying to all waters of the United States, including those within Indian country. Several provisions of the CWA provide EPA with the authority to propose this rule. Section 501(a) of the CWA provides that “[t]he Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter.” Section 303(c)(4)(B) of the CWA provides that “[t]he Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water

quality standard for the navigable waters involved . . . in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of [the Act].” In 2001 the EPA Administrator made an Administrator’s Determination that new or revised WQS are necessary for certain Indian country waters. Today’s action is the first step toward fulfilling that outstanding Determination.

*Alternatives:* No other alternatives considered.

*Anticipated Cost and Benefits:* Total cost estimates range from \$15.51 million in annualized costs over 20 years at a 3 percent discount rate (with \$6.1 million in one-time costs) to \$30.54 in annualized costs over 20 years at a 3 percent discount rate (with \$1.23 million in one-time costs). Using a discount rate of 7 percent over 20 years, total annualized costs range from \$18.94 million (also with \$6.1 million in one-time costs) to \$36.45 million (also with \$1.23 million in one-time costs). Total one-time costs are larger in the low estimate than in the high estimate because one-time WQS variance costs are often used in lieu of annualized effluent treatment costs for facility-specific low estimates for certain pollutants.

Promulgating baseline WQS for Indian reservation waters would promote the implementation of pollution control measures and best practices to help improve water quality and prevent future degradation of Indian reservation waters, as well as potentially providing positive water quality benefits to waters in adjacent jurisdictions. Improved water quality for Indian reservation waters will benefit Tribes as well as anyone who recreates on Indian reservation waters or values environmental quality regardless of their current or anticipated uses of Indian reservation waters. Although implementation of baseline WQS is likely to yield significant benefits, estimating the dollar value of these improvements to Tribes may not be feasible. First, Tribes often express the difficulty of placing a monetary value on ecosystem services, given the belief that these resources are sacred and beyond any earthly value. Second, estimating the value of water quality improvements to visitors of Indian reservations is challenging due to the lack of data on site-specific visitation, use (e.g., recreational fishing) and valuation. Therefore, EPA provided a qualitative description of benefits categories that may stem from baseline WQS. These benefits include those related to human health, ceremonial and subsistence harvests of fish and

shellfish, recreation, and other social welfare improvements. EPA anticipates, however, that the abovementioned benefits will ultimately outweigh the potential estimated incremental costs associated with promulgation of this rule and that this rule will help address the environmental challenges Tribes are currently facing.

*Risks:* EPA is continuing to evaluate potential risks.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	09/29/16	81 FR 66900
NPRM .....	05/05/23	88 FR 29496
NPRM Comment Period End.	08/03/23	
Final Rule .....	04/00/24	

*Regulatory Flexibility Analysis Required:* No.

*Small Entities Affected:* No.

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

*Additional Information:*

*URL For More Information:* <https://www.epa.gov/wqs-tech/promulgation-tribal-baseline-water-quality-standards-under-clean-water-act>.

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*RIN:* 2040–AF62

## EPA—OW

### 221. Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights [2040–AG17]

*Priority:* Other Significant.

*Legal Authority:* 33 U.S.C. 1371

*CFR Citation:* 40 CFR 131.

*Legal Deadline:* None.

*Abstract:* Many tribes hold reserved rights to resources on lands and waters where states establish water quality standards, through treaties, statutes, or other sources of federal law. The U.S. Constitution defines treaties as the supreme law of the land. On November 28, 2022, the EPA Administrator signed a proposed rule that would revise the federal water quality standards regulation to ensure that water quality standards do not impair tribal reserved rights by giving clear direction on how to develop water quality standards

where tribes hold reserved rights. This proposed rule would help EPA ensure protection of resources reserved to tribes in treaties, statutes, or other sources of federal law when establishing, revising, and reviewing water quality standards. The development of this rule helps advance President Biden’s commitment to strengthening nation-to-nation relationships with tribes. EPA consulted with tribes in the summer of 2021 during the pre-proposal phase and in the winter of 2023, concurrent with the public comment period for the proposed rule. EPA is working to expeditiously finalize the proposed rule, taking into account public comments.

*Statement of Need:* This rule would establish a durable and transparent national framework outlining how tribal reserved rights to aquatic-dependent resources must be protected in water quality standards (WQS) for waters in which such rights apply. In 2016 EPA took actions in Maine and Washington to protect tribal reserved rights, requiring that human health criteria for waters in those states where tribes reserved the rights to fish for subsistence be set at more stringent levels to protect tribal fish consumers. In 2019 EPA disavowed the approach it took to protecting tribal reserved rights in the 2016 Maine and Washington actions and concluded that states and EPA can always protect tribal reserved rights by simply applying EPA’s existing regulations and guidance, with no additional consideration of such rights. EPA has now reconsidered its past assertions that tribal reserved rights do not impose any additional requirements in the WQS context. The changes in EPA’s position regarding consideration of reserved rights in the water quality standards context over the years have resulted in confusion for tribes, states, stakeholders and the public about how tribal reserved rights must be considered in establishment of WQS. In addition, states and industry groups criticized EPA for taking its actions in 2016 without first going through a national notice and comment rulemaking on its approach.

*Summary of Legal Basis:* In exercising its CWA section 303(c) authority, EPA has an obligation to ensure that its actions are consistent with treaties, statutes, executive orders, and other sources of Federal law reflecting tribal reserved rights. EPA’s implementing regulation at 40 CFR part 131 specifies requirements for states and authorized tribes to develop WQS for EPA review that are consistent with the Act. EPA is exercising its discretion in implementing CWA section 303(c) to establish new regulatory requirements

to ensure that WQS give effect to rights to aquatic and aquatic-dependent resources reserved in Federal laws.

*Alternatives:* No other options considered.

*Anticipated Cost and Benefits:* EPA estimated the potential incremental administrative burdens and costs that may be associated with the proposed rule, beyond the burden and costs associated with implementation of the current WQS regulation. EPA estimated the total, one-time costs for the proposed rule to range from \$989,112 to \$4,945,562, with no recurring costs. This rule would not establish any requirements directly applicable to regulated entities, such as industrial dischargers or municipal wastewater treatment facilities, but could ultimately lead to additional compliance costs to meet permit limits put in place to comply with new WQS adopted by states. However, because of the uncertainty in the specific outcome of application of this rule, both in terms of location and pollutants involved, EPA is unable to provide estimates of costs to those regulated entities. EPA was likewise unable to quantify the estimated benefits of the proposed rule. EPA anticipates that the rule would enhance the ability of states and tribes to protect their water resources by clarifying and prescribing how to protect waters with applicable tribal reserved rights and improving coordination between Federal, state, and tribal governments.

*Risks:* EPA is continuing to evaluate potential risks.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/05/22	87 FR 74361
NPRM Comment Period End.	03/06/23	
Final Rule .....	03/00/24	

*Regulatory Flexibility Analysis*

*Required:* No.

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

*Additional Information:* OW–2021–0791.

*URL For More Information:* <https://www.epa.gov/wqs-tech/revising-federal-water-quality-standards-regulations-protect-tribal-reserved-rights>.

*URL For Public Comments:* <https://www.regulations.gov/docket/EPA-HQ-OW-2021-0791>.

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RIN: 2040–AG17

**EPA—OW**

**222. PFAS National Primary Drinking Water Regulation Rulemaking [2040–AG18]**

*Priority:* Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

*Unfunded Mandates:* Undetermined.

*Legal Authority:* 42 U.S.C. 300f *et seq.* Safe Drinking Water Act

*CFR Citation:* 40 CFR 141; 40 CFR 142.

*Legal Deadline:* NPRM, Statutory, March 3, 2023, Safe Drinking Water Act. Final, Statutory, September 3, 2024, Safe Drinking Water Act.

*Abstract:* On March 3, 2021, the Environmental Protection Agency (EPA) published the Fourth Regulatory Determinations in the **Federal Register**, including a determination to regulate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) in drinking water. Per the Safe Drinking Water Act, following publication of the Regulatory Determination, the Administrator shall propose a maximum contaminant level goal (MCLG) and a national primary drinking water regulation (NPDWR) not later than 24 months after determination and promulgate a NPDWR within 18 months after proposal (the statute authorizes a 9-month extension of this promulgation date). EPA issued a proposed national primary drinking water regulation for PFOA and PFOS as well as other PFAS on March 29, 2023 as part of this action. This action provides a key commitment in EPA’s “PFAS Strategic Roadmap: EPA’s Commitments to Action 2021–2024.”

*Statement of Need:* EPA has determined that PFOA and PFOS may have adverse health effects; that PFOA and PFOS occur in public water systems with a frequency and at levels of public health concern; and that, in the sole judgment of the Administrator, regulation of PFOA and PFOS presents a meaningful opportunity for health risk reduction for persons served by public water systems.

*Summary of Legal Basis:* The EPA is developing a PFAS NPDWR under the authority of the Safe Drinking Water Act (SDWA), including sections 1412, 1413, 1414, 1417, 1445, and 1450 of the SDWA. Section 1412 (b)(1)(A) of the

SDWA requires that EPA shall publish a maximum contaminant level goal and promulgate a NPDWR if the Administrator determines that (1) the contaminant may have an adverse effect on the health of persons, (2) is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at a level of public health concern, and (3) in the sole judgment of the Administrator there is a meaningful opportunity for health risk reduction for persons served by public water systems. EPA published a final determination to regulate PFOA and PFOS on March 3, 2021 after considering public comment (86 FR 12272). Section 1412 (b)(1)(E) of the SDWA requires that EPA publish a proposed Maximum Contaminant Level Goal and a NPDWR within 24 months of a final regulatory determination and that the Agency promulgate a NPDWR within 18 months of proposal.

*Alternatives:* Undetermined.

*Anticipated Cost and Benefits:* Undetermined.

*Risks:* Studies indicate that exposure to PFOA and/or PFOS above certain exposure levels may result in adverse health effects, including developmental effects to fetuses during pregnancy or to breast-fed infants (e.g., low birth weight, accelerated puberty, skeletal variations), cancer (e.g., testicular, kidney), liver effects (e.g., tissue damage), immune effects (e.g., antibody production and immunity), and other effects (e.g., cholesterol changes). Both PFOA and PFOS are known to be transmitted to the fetus via the placenta and to the newborn, infant, and child via breast milk. Both compounds were also associated with tumors in long-term animal studies.

*Timetable:*

Action	Date	FR Cite
Notice .....	02/09/22	87 FR 7412
NPRM .....	03/29/23	88 FR 18638
NPRM Comment Period End.	05/30/23	
Final Rule .....	01/00/24	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Small Entities Affected:* Governmental Jurisdictions.

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

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

*Additional Information:*

*Agency Contact:* Alexis Lan, Environmental Protection Agency, Office of Water, 1200 Pennsylvania Avenue NW, 4601M, Washington, DC

20460, Phone: 202 564-0841, Email: [lan.alexis@epa.gov](mailto:lan.alexis@epa.gov).  
RIN: 2040-AG18

## EPA—OW

### 223. Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category [2040-AG23]

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

**Unfunded Mandates:** Undetermined.

**Legal Authority:** 33 U.S.C. 1361; 33 U.S.C. 1318; 33 U.S.C. 1317; 33 U.S.C. 1316; 33 U.S.C. 1311; 33 U.S.C. 1314

**CFR Citation:** 40 CFR 423.

**Legal Deadline:** None.

**Abstract:** On March 29, 2023, EPA published a proposed rule to potentially strengthen the Steam Electric Effluent Limitations Guidelines and Standards (ELGs) (40 CFR 423). EPA previously revised the Steam Electric ELGs in 2015 and 2020. The proposed rule would establish more stringent ELGs for two waste streams addressed in the 2020 “Steam Electric Reconsideration Rule” (flue gas desulfurization wastewater and bottom ash transport water). In addition, the proposal would establish more stringent effluent limitations and standards for an additional waste stream (combustion residual leachate) and takes comment on potential revisions to limitations and standards for a fourth waste stream (legacy wastewater). The first two waste streams mentioned above are the subject of current litigation pending in the U.S. Court of Appeals for the Fourth Circuit. *Appalachian Voices, et al. v. EPA*, No. 20-2187 (4th Cir.). The 2015 limitations for combustion residual leachate and legacy wastewater discharged by existing sources were vacated by the U.S. Court of Appeals for the Fifth Circuit in *Southwestern Electric Power Co., et al. v. EPA*, 920 F.3d 999 (5th Cir. 2019).

**Statement of Need:** Under Executive Order 13990 on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (January 20, 2021), EPA was directed to review the 2020 Steam Electric Reconsideration Rule.

**Summary of Legal Basis:** Sections 101; 301; 304(b), (c), (e), and (g); 306; 307; 308 and 501, Clean Water Act (Federal Water Pollution Control Act Amendments of 1972, as amended; 33 U.S.C. 1251; 1311; 1314(b), (c), (e), and (g); 1316; 1317; 1318 and 1361).

**Alternatives:** EPA considered four regulatory options at the proposed rule stage. Three alternatives varied in the stringency of limitations for flue gas

desulfurization wastewater and bottom ash transport water while subcategorizing early adopters while the fourth option did not include this new subcategory. All four regulatory options removed the existing high flow and low utilization subcategories included in the 2020 final rule. For further information, visit: <https://www.federalregister.gov/documents/2023/03/29/2023-04984/supplemental-effluent-limitations-guidelines-and-standards-for-the-steam-electric-power-generating>.

**Anticipated Cost and Benefits:** At proposal, EPA estimated that the proposed rule will cost \$200 million per year in social costs and result in \$1,557 million per year in monetized benefits using a three percent discount rate and will cost \$216 million per year in social costs and result in \$1,290 million per year in monetized benefits using a seven percent discount rate.

**Risks:** At proposal, EPA estimated that the rule would reduce risks to human health and ecological receptors via multiple pathways including via air pollution, surface water contamination, and disinfection byproduct formation in drinking water systems.

#### Timetable:

Action	Date	FR Cite
Notice .....	08/03/21	86 FR 41801
NPRM .....	03/29/23	88 FR 18824
NPRM Comment Period End.	05/30/23	
Final Rule .....	04/00/24	

#### Regulatory Flexibility Analysis

**Required:** Undetermined.

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

**Federalism:** Undetermined.

**Additional Information:** EPA-HQ-OW-2009-0819.

**Sectors Affected:** 221112 Fossil Fuel Electric Power Generation.

**Agency Contact:** Jesse Pritts, Environmental Protection Agency, Office of Water, Mail Code 4303T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, Phone: 202 566-1038, Email: [pritts.jesse@epa.gov](mailto:pritts.jesse@epa.gov).

**Related RIN:** Split from 2040-AG28

**RIN:** 2040-AG23

**BILLING CODE** 6560-50-P

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

### Statement of Regulatory and Deregulatory Priorities

The mission of the Equal Employment Opportunity Commission (EEOC, Commission, or Agency) is to ensure equality of opportunity in employment

by vigorously enforcing and educating the public about the following Federal statutes: title VII of the Civil Rights Act of 1964, as amended (prohibits employment discrimination on the basis of race, color, sex (including pregnancy, sexual orientation, and gender identity), religion, or national origin); the Equal Pay Act of 1963, as amended (makes it illegal to pay unequal wages to persons of different sexes performing substantially equal work under similar working conditions at the same establishment); the Age Discrimination in Employment Act of 1967, as amended (prohibits employment discrimination based on age of 40 or older); titles I and V of the Americans with Disabilities Act, as amended, and sections 501 and 505 of the Rehabilitation Act, as amended (prohibits employment discrimination based on disability); title II of the Genetic Information Nondiscrimination Act (prohibits employment discrimination based on genetic information and limits acquisition and disclosure of genetic information); section 304 of the Government Employee Rights Act of 1991 (protects certain previously exempt state and local government employees from employment discrimination on the basis of race, color, religion, sex, national origin, age, or disability); and the Pregnant Workers Fairness Act (requires covered entities to provide reasonable accommodation to qualified applicants' and employees' known limitations related to, affected by, or arising out of pregnancy, childbirth or related medical conditions, unless doing so would cause an undue hardship).

The EEOC has authority to issue legislative regulations under the Age Discrimination in Employment Act (ADEA), title I of the Americans with Disabilities Act (ADA), title II of the Genetic Information Nondiscrimination Act (GINA), and under the Pregnant Workers Fairness Act (PWFA). Under title VII of the Civil Rights Act, the EEOC's authority to issue legislative regulations is limited to procedural, record keeping, and reporting matters.

Nine pending items are identified in the EEOC's Fall 2023 Regulatory Agenda, five at the proposed rule stage and four at the final rule stage. One of those items is singled out as a key priority in this Regulatory Plan: the recently published proposed rule implementing the PWFA, for which a final rule will be drafted after consideration of public comments received from the full range of EEOC stakeholders.

The PWFA went into effect on June 27, 2023, and it requires employers with



15 or more employees to provide reasonable accommodations to job applicants and employees for known limitations related to, affected by, or arising out of pregnancy, childbirth or related medical conditions, unless doing so would cause an undue hardship for the employer. While other laws enforced by the EEOC, including title VII and the ADA, provide some protections and accommodations for pregnant workers, the PWFA fills gaps in these federal legal protections. Under the ADA, unless the individual's pregnancy, childbirth, or related medical condition rose to the level of a disability as defined in that statute, an employer would not be obligated to provide a reasonable accommodation to do the job. Under title VII, the pregnant employee would need to show that the employer provided the accommodation to a similarly situated worker who was not pregnant in order to get the accommodation. The PWFA requires covered entities to provide reasonable accommodations to a qualified employee's or applicant's known limitation related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause an undue hardship on the operation of the business of the covered entity. The PWFA provides some examples of potential reasonable accommodations for pregnant employees, such as: a change in the food or drink policies to allow the pregnant worker to have a water bottle or food; a reduction in lifting requirements; the ability to sit; additional breaks to use the bathroom, eat, and rest; being excused from activities that involve exposure to compounds unsafe for pregnancy; and providing appropriately sized uniforms and safety apparel.

On August 11, 2023, the EEOC issued proposed regulations soliciting public input and comment before the PWFA regulations become final. *See Federal Register: Regulations To Implement the Pregnant Workers Fairness Act.* The EEOC announced a 60-day public comment period, starting on August 11, 2023 and ending on October 10, 2023. Additionally, through media exposure, including press interviews, the Commission continues to inform the public of these new employee protections. The EEOC also conducted trainings so that employers and employees better understand their rights and responsibilities under the PWFA, and it will continue to do so in the months and years ahead.

Consistent with Executive Order 12866, as reaffirmed and amended in Executive Order 13563, and

subsequently reaffirmed and supplemented by Executive Order 14094, this statement was reviewed and approved by the Chair of the Agency.

**EEOC**

Final Rule Stage

**224. Regulations To Implement the Pregnant Workers Fairness Act [3046–AB30]**

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* Pub. L. 117–328, 136 Stat. 4459, division II

*CFR Citation:* 29 CFR 1636.

*Legal Deadline:* Final, Statutory, December 29, 2023.

*Abstract:* The Equal Employment Opportunity Commission (EEOC) will issue a rule to implement the Pregnant Workers Fairness Act, a new law that requires covered entities to provide reasonable accommodations to a qualified worker's known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause an undue hardship.

*Statement of Need:* The Pregnant Workers Fairness Act (PWFA) is a new law. It requires a covered entity to provide reasonable accommodations, absent undue hardship, to a qualified employee or applicant with a known limitation related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions. The PWFA requires the EEOC to issue regulations by December 29, 2023. 42 U.S.C. 2000gg–3(a).

*Summary of Legal Basis:* The PWFA requires the EEOC to issue regulations by December 29, 2023. 42 U.S.C. 2000gg–3(a).

*Alternatives:* The EEOC will consider possible alternatives for its regulation. However, the possible alternatives are limited by certain provisions in the statute that set out what employers are covered, when the statute goes into effect, the procedures for enforcement, and require the EEOC to issue regulations.

*Anticipated Cost and Benefits:* The EEOC anticipates that the regulation will have significant benefits for workers, including benefits that are difficult to quantify such as a reduction in discrimination and improvements in the economic security and health outcomes for pregnant workers. The costs of the regulation and statute will be for employers that have to provide reasonable accommodations and one-time administrative costs for covered

employers to come into compliance with the statute and regulation. The EEOC anticipates that both of these costs will be low for individual employers.

*Risks:* The rule imposes no new or additional risks to employers. The rule does not address risks to public safety or the environment.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/11/23	88 FR 54714
NPRM Comment Period End.	10/10/23	
Final Action .....	12/00/23	

*Regulatory Flexibility Analysis Required:* Undetermined.

*Small Entities Affected:* Businesses, Governmental Jurisdictions, Organizations.

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

*Federalism:* Undetermined.

*Agency Contact:*  
Sharyn A. Tejani, Associate Legal Counsel, Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507, Phone: 202 921–3240, Email: sharyn.tejani@eeoc.gov.

RIN: 3046–AB30

BILLING CODE 6570–01–P

**GENERAL SERVICES ADMINISTRATION (GSA)**

**Regulatory Plan—October 2023**

The U.S. General Services Administration (GSA) delivers value and savings in real estate, acquisition, technology, and other mission-support services across the Federal Government. GSA's acquisition solutions supply Federal purchasers with cost-effective, high-quality products and services from commercial vendors. GSA provides workplaces for Federal employees and oversees the preservation of historic Federal properties. GSA helps keep the Nation safe and efficient by providing tools, equipment, and non-tactical vehicles to the U.S. military, and by providing State and local governments with law enforcement equipment, firefighting and rescue equipment, and disaster recovery products and services.

As GSA is developing its regulations, it seeks to increase participation and engagement of members of the public affected by its regulations, including in the development of its regulatory priorities. In its Regulatory Plan, it details engagement efforts that have helped to inform its priorities to date, as well as future engagement it has

planned. In support of Executive Order 14094, GSA is ensuring that it hears from members of the public who have not typically participated in the regulatory process, including families eligible for assistance, communities affected by climate change, and rural workers, among others.

GSA serves the public by delivering products and services directly to its Federal customers through the Federal Acquisition Service (FAS), the Public Buildings Service (PBS), and the Office of Government-wide Policy (OGP). GSA has a continuing commitment to its Federal customers and the U.S. taxpayers by providing those products and services in the most cost-effective manner possible.

### **Federal Acquisition Service**

FAS is the lead organization for procurement of products and services (other than real property) for the Federal Government. The FAS organization leverages the buying power of the Government by consolidating Federal agencies' requirements for common goods and services. FAS provides a range of high-quality and flexible acquisition services to increase overall Government effectiveness and efficiency by aligning resources around key functions.

### **Public Buildings Service**

PBS is the largest public real estate organization in the United States. As the landlord for the civilian Federal Government, PBS acquires space on behalf of the Federal Government through new construction and leasing and acts as a manager for Federal properties across the country. PBS is responsible for over 370 million rentable square feet of workspace for Federal employees; has jurisdiction, custody, and control over more than 1,600 federally owned assets totaling over 180 million rentable square feet; and contracts for more than 7,000 leased assets, totaling over 180 million rentable square feet.

In fiscal year (FY) 2023, GSA expects to update the existing internal guidance and issue a new PBS Order following the release of the Implementing Instructions for Executive Order 14057 on Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability that was issued on December 8, 2021.

### **Office of Government-Wide Policy**

OGP sets Government-wide policy in the areas of personal and real property, mail, travel, motor vehicles, relocation, transportation, information technology, regulatory information, and the use of Federal advisory committees. OGP also

helps direct how all Federal supplies and services are acquired, as well as GSA's own acquisition programs. Pursuant to Executive Order 12866, "Regulatory Planning and Review" (September 30, 1993), and Executive Order 13563, "Improving Regulation and Regulatory Review" (January 18, 2011), the Regulatory Plan and Unified Agenda provides notice regarding OGP's regulatory and deregulatory actions within the Executive Branch.

GSA prepared a list of actions in the areas of Climate Risk Management, Resilience, and Adaptation; Environmental Justice; Greenhouse Gas Reduction; Clean Energy; Energy Reduction; Water Reduction; Performance Contracting; Waste Reduction; Sustainable Buildings; and Electronics Stewardship and Data Centers. Detailed information on actions GSA is considering taking through December 31, 2025, to implement the Administration's policy set by Executive Orders 13990 and 14008 were provided in GSA's Executive Order 13990 90-day response, the GSA Climate Change Risk Management Plan, and the GSA 2021 Sustainability Plan. More specifics will be known on the Sustainability Plan when feedback is obtained from the Council on Environmental Quality and the Office of Management and Budget.

### **Office of Asset and Transportation Management**

The Office of Asset and Transportation Management and Office of Acquisition Policy are prioritizing rulemaking focused on initiatives that:

- Promote the country's economic resilience and improve the buying power of U.S. citizens;
- Support underserved communities, promoting equity in the Federal Government; and
- Support national security efforts, especially safeguarding Federal Government information and information technology systems.

The Fall 2023 Unified Agenda consists of 14 active Office of Asset and Transportation Management (MA) agenda items, of which 6 active actions are included in the Federal Travel Regulation (FTR) and 8 active actions are included in the Federal Management Regulation (FMR).

The FTR enumerates the travel and relocation policy for all title 5 Executive Agency civilian employees. The Code of Federal Regulations (CFR) is available at <https://ecfr.federalregister.gov/>. The FTR is contained in chapters 300 through 304 of title 41 of the CFR, which implements statutory requirements and Executive branch policies for travel by Federal civilian

employees and others authorized to travel at Government expense. The FMR is contained in chapter 102 of title 41 of the CFR, and establishes policy for Federal aircraft management, mail management, transportation, personal property, real property, motor vehicles, and committee management.

### **Past or Ongoing Public or Community Engagement That Informed the Development of GSA Rules**

Although focused primarily on agency management and personnel, most rules issued by the Office of Asset and Transportation Management are preceded by proposed rules to encourage public participation. In FY 2022, two Federal Management Regulations (Real Estate Acquisition; and Replacement of Personal Property Pursuant to the Exchange/Sale Authority) and two Federal Travel Regulation proposed rules (Common Carrier Transportation; and Constructive Cost) were published. One final rule (Federal Management Regulation; Soliciting Union Memberships Among Contractors in GSA-Controlled Buildings), was issued as a final rule with a 60-day comment period for future rulemaking.

In FY 2023, two Federal Travel Regulation proposed rules (Alternative Fuel Vehicle Usage During Relocations; and Relocation Allowance—Temporary Quarters Subsistence Expenses (TQSE)) were published. One GSA proposed rule (General Services Administration Property Management Regulations (GSPMR) Social Security Number Fraud Prevention) and one joint agency proposed rule (Use of Federal Real Property To Assist the Homeless: Revisions to Regulations) were published. Collectively, the public provided 11 comments on the FY 2023 proposed rules. This input was used in the formulation of the final rules.

In FY 2024, the Office of Asset and Transportation Management will continue to issue proposed rules with a 60-day comment period to obtain public feedback. Four proposed rules are anticipated including: FMR Case 2018–102–1, Safety and Environmental Management; FMR 2022–01, Federal Advisory Committee Management; FTR Case 2022–04, Relocation Allowance—Allowance for Miscellaneous Expenses; FTR Case 2020–301–1 E-Gov Travel Services updates; and Federal Management Regulation; Interagency Fleet Management Systems; FMR Case 2019–102–2.

### **Rulemaking That Tackles Climate Change**

FTR Case 2022–03, Alternative Fuel Vehicle Usage During Relocations, allows greater agency flexibility for authorizing shipment of a relocating employee's alternative fuel-based privately owned vehicle (POV), as some POVs, primarily electric vehicles, cannot be driven more than a short distance without being recharged. Because of the topic area being of great public interest in recent years, this rule did attract a small number of comments from the public. The comments reflected both support of the proposal and dislike of spending funds on Federal employee relocation, and caused GSA to think more about whether the ideas presented were workable and had merit. While ultimately GSA decided some of the ideas had merit, but were not within GSA's authority, it was helpful to see the public's perspective.

FMR Case 2023–102–1, Sustainable Siting, promotes economy and efficiency in the planning, acquisition, utilization, and management of Federal facilities. The rule will incorporate the concepts of several Administration priorities, including sustainability, equity, and environmental justice. This rule will help reduce emissions across Federal workplaces by requiring that all new construction, modernization projects, and leases implement a number of energy efficient, sustainable, and climate-resilient building practices for Federal facilities.

### **Rulemaking That Supports Equity and Underserved Communities**

FTR Case 2022–05, Updating the FTR With Diversity, Equity, Inclusion, and Accessibility Language, updates the entirety of the FTR to ensure that its language reflects inclusivity by replacing gender-specific pronouns (*e.g.*, he, she, his, her) with non-gendered pronouns and other language that reflects inclusivity and equity.

FMR Case 2022–01, Federal Advisory Committee Management, the Federal Advisory Committee Act (FACA) is a transparency statute designed to provide Congress, interested stakeholders, and the public with information on, and access to, the activities, membership, meetings, and costs, of Federal advisory committees established by the Executive Branch. Under section 7 of FACA, GSA is responsible for preparing regulations for implementing FACA. The proposed rule revisions will provide updates and clarification to policies and processes, and further incorporate diversity, equity, inclusion, and accessibility

policies into the Federal advisory committee program government-wide, which is an Administration priority.

FMR Case 2021–01, Use of Federal Real Property to Assist the Homeless, will streamline the process by which excess Federal real property is screened for potential conveyance to homeless interests.

### **Rulemaking That Supports National Security**

FMR Case 2021–102–1, “Real Estate Acquisition,” will clarify the policies for entering into leasing agreements for high security space (*i.e.*, space with a Facility Security Level of III, IV, or V) in accordance with the Secure Federal LEASEs Act (Pub. L. 116–276).

### **Office of Acquisition Policy**

The Fall 2023 Unified Agenda consists of 17 active Office of Acquisition Policy (MV) agenda items, all of which are for the General Services Administration Acquisition Regulation (GSAR).

### **Office of Acquisition Policy—General Services Administration Acquisition Regulation**

GSA's rules and practices on how it buys goods and services from its business partners are covered by the GSAR, which implements and supplements the Federal Acquisition Regulation (FAR). The GSAR establishes agency acquisition regulations that affect GSA's business partners (*e.g.*, prospective offerors and contractors) and acquisition of leasehold interests in real property. The latter are established under the authority of 40 U.S.C. 121(c) and 585. The GSAR implements contract clauses, solicitation provisions, and standard forms that control the relationship between GSA and its contractors and prospective contractors.

### **Significant Determinations in Accordance With Executive Order 12866 Section (f)(1)**

No GSAR rules in the previous Regulatory Plan or this Regulatory Plan are anticipated to have a monetary annual effect of \$200 million or more.

### **Past or Ongoing Public or Community Engagement That Informed the Development of GSAR Cases**

- For rules that GSA expects to have significant public interest, GSA's Office of Acquisition Policy (OAP) may issue an Advanced Notice of Proposed Rulemaking (ANPR) in order to involve the public at the earliest stages. For example, an ANPR was issued to assist in GSA's formulation of GSAR Case

2022–G517, Single-use Plastic Packaging Reduction.

- When issuing proposed rules, OAP regularly requests public comment to help in the formulation of the final rule.

- OAP regularly meets with the Council of Defense and Space Industry Associations (CODSIA). CODSIA represents member associations representing numerous small, medium, and large companies. Examples of these member associations include the Professional Services Council (PSC), Information Technology Industry Council (ITI), and the Associated General Contractors (AGC) to name a few. OAP anticipates continuing these meetings into the foreseeable future.

- Future opportunities OAP intends to pursue to increase public engagement in the development of regulatory acquisition rules includes partnering with GSA's Office of Small and Disadvantaged Business Utilization (OSDBU) in their industry outreach events. GSA's OSDBU services small and disadvantaged businesses and works with advocacy groups, chambers of commerce, and small business coalitions in order to bring small businesses to the forefront of federal procurement opportunities.

### **Rulemaking That Tackles the Climate Change Emergency**

GSAR Case 2022–G517, Single-use Plastic Packaging Reduction, explores regulation that will reduce single-use plastic consumption by the agency. Single-use plastic poses an environmental risk that is documented as having the potential to impact biodiversity. The case focuses on packaging materials with the overall intent of addressing not only the items that the Government intentionally consumes, but those products that the Government unintentionally consumes (such as packaging) that then have to be disposed of once the item is delivered.

### **Rulemaking That Advances Equity and Supports Underserved, Vulnerable and Marginalized Communities**

GSAR Case 2020–G511, Updated Guidance for Non-Federal Entities Access to Federal Supply Schedules, will clarify the requirements for use of the FSS by eligible non-Federal entities, such as State and local governments. The regulatory changes are intended to increase understanding of the existing guidance and expand access to GSA sources of supply by eligible non-Federal entities, as authorized by historic statutes, including the Federal Supply Schedules Usage Act of 2010.

### **Rulemaking That Reflects Actions That Create and Sustain Good Jobs With a Free and Fair Choice To Join a Union and Promote Economic Resilience in General**

GSAR Case 2021–G530, Labor Requirements for Lease Acquisitions, will increase efficiency and cost savings in the work performed for leases with the Federal Government by increasing the hourly minimum wage paid to those contractors in accordance with Executive Order 14026, “Increasing the Minimum Wage for Federal Contractors,” dated April 27, 2021, and U.S. Department of Labor regulations at 29 CFR part 23.

GSAR Case 2020–G510, Federal Supply Schedule Economic Price Adjustment (EPA), will clarify, update, and incorporate Federal Supply Schedule (FSS) program policies and procedures regarding economic price adjustment, including updating related prescriptions and clauses. Ultimately, the case aims to streamline the EPA process for FSS business partners and GSA’s acquisition workforce.

GSAR Case 2021–G530, Extension of Federal Minimum Wage to Lease Acquisitions, will increase efficiency and cost savings in the work performed for leases with the Federal Government by increasing the hourly minimum wage paid to those contractors in accordance with Executive Order 14026, “Increasing the Minimum Wage for Federal Contractors,” dated April 27, 2021, and U.S. Department of Labor regulations at 29 CFR part 23.

### **Rulemaking Reflecting Actions That Improve Service Delivery, Customer Experience, and Reduce Administrative Burdens**

GSAR Case 2022–G506, Standardizing the Identification of Deviations in the GSAR, standardizes the identification, including number, title, date, and deviation label, of any provision or clause listed in the General Services Administration Regulation (GSAR) that has an authorized deviation. Standardizing this information will add clarity and uniformity, therefore reducing burden, for both the GSA acquisition workforce and GSA’s industry partners.

Dated: August 15, 2023.

Krystal J. Brumfield,  
Associate Administrator, Office of  
Government-wide Policy.

BILLING CODE 6820–14  
BILLING CODE 6820–34–P

### **NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)**

#### **Statement of Regulatory Priorities**

The National Aeronautics and Space Administration’s (NASA) aim is to increase human understanding of the solar system and the universe that contains it and to improve American aeronautics ability. NASA’s basic organization consists of the Headquarters, nine field Centers, the Jet Propulsion Laboratory (a federally funded research and development center), and several component installations which report to Center Directors. Responsibility for overall planning, coordination, and control of NASA programs is vested in NASA Headquarters, located in Washington, DC.

NASA continues to implement programs according to its 2022 Strategic Plan. The Agency’s mission is to “explore the unknown in air and space, innovate for the benefit of humanity, and inspire the world through discovery.” The 2022 Strategic Plan (available at 2022 NASA Strategic Plan) guides NASA’s program activities through a framework of the following four strategic goals:

- Strategic Goal 1: Expand human knowledge through new scientific discoveries.
- Strategic Goal 2: Extend human presence deeper into space and to the Moon for sustainable long-term exploration and utilization.
- Strategic Goal 3: Catalyze economic growth and drive innovations to address national challenges.
- Strategic Goal 4: Enhance capabilities and operations to catalyze current and future mission success.

#### **NASA’s Regulatory Philosophy and Principles**

The Agency’s rulemaking program strives to be responsive, efficient, and transparent. NASA adheres to the general principles set forth in Executive Order 12866, Regulatory Planning and Review. NASA is a signatory to the Federal Acquisition Regulatory (FAR) Council. The FAR at 48 Code of Federal Regulations (CFR), chapter 1, contains procurement regulations that apply to NASA and other Federal agencies. Pursuant to 41 United States Code (U.S.C.), section 1302, and FAR 1.103(b), the FAR is jointly prepared, issued, and maintained by the Secretary of Defense, the Administrator of General Services, and the Administrator of NASA, under several of their statutory authorities.

NASA is also mindful of the importance of international regulatory

cooperation, consistent with domestic law and the United States (U.S.) trade policy, as noted in Executive Order 13609, Promoting International Regulatory Cooperation. NASA, along with the Departments of State, Commerce, and Defense, engage with other countries in the Wassenaar Arrangement, Nuclear Suppliers Group, Australia Group, and Missile Technology Control Regime through which the international community develops a common list of items that should be subject to export controls. NASA also has been a key participant in interagency efforts to overhaul and streamline the U.S. Munitions List and the Commerce Control List. These efforts help facilitate transfers of goods and technologies to allies and partners while helping prevent transfers to countries of national security and proliferation concerns.

#### **NASA Priority Regulatory Actions**

NASA is highlighting the priorities summarized below in this agenda.

#### *Procedures for Implementing the National Environmental Policy Act (NEPA)*

NASA is finalizing its regulations for implementing the National Environmental Policy Act of 1969 and the Council on Environmental Quality regulations. These amendments will update 14 CFR subpart 1216.3, Procedures for Implementing the NEPA, to incorporate the Agency’s review of its Categorical Exclusions and streamline the NEPA process to better support NASA’s evolving mission.

#### *NASA Federal Acquisition Regulation (FAR) Supplement (NFS)*

NASA is finalizing its regulations in the NFS at 48 CFR, chapter 18. These amendments will remove the Solicitation Provision and the Determination of Compensation Reasonableness to align with FAR requirements and changes made in 10 U.S.C. pursuant to a section of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283). The Agency will also issue a proposed rule to amend chapter 18 to align with changes made in the FAR that reflects an updated “commercial item” definition pursuant to a section of the John S. McCain NDAA for FY 2019 (Pub. L. 115–232).

#### **Public Outreach and Engagement**

As NASA develops regulations, we seek to increase public participation and community outreach to be better informed of and address issues from

members of the public affected by our regulations. For example, our Office of Communications is currently beta testing a revised website to enhance NASA's interactions with the public. The revised site will include a "Doing Business With NASA" page; opportunities and advice on providing public comment on NASA regulations, and information on forming partnerships with the Agency using NASA's Other Transactional Authorities, such as Space Act Agreements.

NASA uses **Federal Register** notices, website postings, press releases, and social media releases to notify the public of the dates and times for input on NASA programs. NASA offices also work to support roundtables and similar engagements so stakeholder organizations can meet with NASA leaders to discuss and share information about NASA policies and programs. Currently, the Agency sponsors 12 Federal advisory committee providing NASA the opportunity to engage with external subject matter experts on key topics of Agency interest. All advisory meetings are announced in the **Federal Register**, allowing an opportunity for the public to obtain information on committee work before it leads to recommendations for Agency consideration.

NASA engages with the public on procurement-related regulations in several ways. In addition to publishing abstracts and anticipated publication dates for upcoming rules in the biannual Unified Agenda, members of the public can track the progress of any open and pending NASA regulation upon publication of NASA Federal Acquisition Regulations (FAR) Supplement (NFS) rules in the **Federal Register** (FR).

NASA also meets with industry associations on a quarterly basis both for its own regulations and as a signatory to the FAR. Industry associations that regularly participate in these discussions include members of Council of Defense and Space Industry Associations (CODSIA). CODSIA current member associations include:

- Aerospace Industries Association
- American Council of Engineering Companies
- Associated General Contractors
- Computing Technology Industry Association Federal Procurement Council
- Information Technology Industry Council
- National Defense Industrial Association
- Professional Services Council

During these meetings, NASA often provides information on open FAR rules which is publicly accessible in the FAR Case Status Report at [https://www.acq.osd.mil/dpap/dars/far\\_case\\_status.html](https://www.acq.osd.mil/dpap/dars/far_case_status.html), and may provide an update on companion NFS acquisition rules. Occasionally, while NFS or FAR rules are out for public comment, NASA will hold a public meeting to allow the public to provide feedback in an open forum. Information regarding a public meeting is typically provided the rule document upon publication for comment.

NASA's Acquisition also conveys policy changes through publications the following websites:

- Procurement Class Deviations at <https://www.hq.nasa.gov/office/procurement/regs/pcd.pdf>.
- Procurement Notices (<https://www.hq.nasa.gov/office/procurement/regs/pn.pdf>).
- Procurement Information Circulars at <https://www.hq.nasa.gov/office/procurement/regs/pic.pdf>.

NASA actively engages the public through **Federal Register** publications. For example, two Requests for Information [86 FR 31735 and 88 FR 21725] were published to gather input on the obstacles and difficulties hindering involvement of individuals from underserved communities (as defined in Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, and Executive Order 14091 Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government) in NASA's procurement, grants, and cooperative agreements. Currently, public responses are being reviewed by the Agency. In the interim, NASA has taken action to increase its outreach efforts aimed at reaching underserved communities; specifically providing additional virtual training seminars and webinars to engage members of underserved communities on understanding NASA programs and on how to do business with NASA.

In addition to these program-specific efforts, NASA regularly seeks feedback from customers in the form of information collections under the Paperwork Reduction Act (PRA). The Agency maintains several generic PRA clearances allowing the Agency to rapidly engage the public.

#### **2700–0153, Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery**

This collection of information allows the Agency to engage members of the public and stakeholders through quick

surveys, small discussion or focus groups, and can highlight areas where communication, training, or changes in operations which could improve delivery of products or services. For example, the Artemis Student Challenges (ASC) provides foundational learning opportunities to prepare students to learn and engage in Artemis-focused challenges that align with the technological needs of the Artemis missions and/or that will provide the Artemis generation with new, authentic, high-quality student challenge experiences. ASC provides students with the opportunity to design, build, and test technologies.

#### **2700–0159, Generic Clearance for the NASA Office of Education Performance Measurement and Evaluation (Testing)**

This collection supports NASA's Office of STEM Engagement which administers the Agency's national education activities in support of the Space Act. This collection allows the Agency to validate the forms and instruments used by educators, students and NASA interns for program application forms, customer satisfaction questionnaires, focus group protocols, and project activity survey instruments.

#### **2700–0181, Generic Clearance for Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)**

This information collection is used to garner customer and stakeholder feedback in accordance with the Administration's commitment to improving customer service delivery as discussed in Section 280 of OMB Circular A–11. The Circular established government-wide standards for mature customer experience organizations in government to identify their highest-impact customer journeys and select touchpoints or transactions within those journeys to collect feedback. These results will be used to improve the delivery of Federal services and programs and will provide government-wide data on customer experience that can be displayed on *performance.gov* to help build transparency and accountability of Federal programs.

NASA's SBIR/STTR team is currently considering how to leverage this collection to:

- Develop a user-friendly interface for online applications to make it easier for small businesses to navigate the submission process.
- Simplify the application process to reduce administrative burden.

- Seek feedback from applicants and stakeholders to identify areas for improvement.

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.

### Proposed Changes to Rescheduling Requirements

In the second quarter of FY 2024, NARA will issue a draft rule with changes to 36 CFR 1225.22 regarding requirements for agencies to reschedule their records. All rescheduling requirements will be in section 1225.22. NARA will remove and reserve sections 1225.24 and 1225.26 to eliminate the media neutral notification requirement, which is no longer relevant.

### Enhancing Oversight Requirements for Records Management

We also propose to amend 36 CFR part 1239. We are removing subpart B—Program Assistance, as it is out-of-date and informational, and provides no

agency requirements. We are proposing to update the remaining subparts to provide clarity and specificity to our agency oversight requirements. We propose to move unauthorized disposition requirements from 36 CFR part 1230 to 36 CFR part 1239 and strengthen them.

### Streamlining Requirements for Agencies Dealing With General Records Schedules and GAO

We propose updating 36 CFR 1225.20 and removing 1225.12(h) to make it easier for agencies applying the General Records Schedules (GRS) by minimizing the instances where the General Accounting Office (GAO) must be consulted. Now, agencies will only need GAO approval for deviations from GRS 1.1, item 010, which relates to accountable officer records. They won't need GAO approval for deviations from other parts of the GRS. Also, they won't need GAO approval for program records schedules that are less than three years old.

### New Digitization Standards for Permanent Still Image Film Records

The next step for digitization standards in NARA's Regulations will include technical standards for digitizing various permanent still image film records, such as transparencies, negatives, radiographic, microfiche, and microfilm. These standards will be added to subpart E of 36 CFR part 1236.

### Revising Provisions for Digital Photographs

We propose revising the provisions stated in 36 CFR 1237.28(d), which addresses special concerns for digital photographs. This revision is essential because the recent publication of subpart E of 36 CFR part 1236 introduces new and more detailed requirements for digitizing photographic prints.

### Authorization for Disposing of Digitized Temporary Records

In June 2023, NARA released GRS Transmittal 34, introducing GRS 4.5 Digitizing Records. As a result, we propose updating the regulations in 36 CFR 1236.36 to ensure appropriate authorization for disposing of temporary records after they have been digitized. Furthermore, we propose aligning the language used throughout 36 CFR subpart D with the newly published subpart E of 36 CFR part 1236.

### Improving Regulations for Electronic Message Preservation

On January 1, 2021, the Federal Records Act was amended. The updated

law now requires the Archivist of the United States to create regulations for federal agencies on preserving electronic messages that are considered records. In response to this, we are proposing changes to our regulations by revising section 1236.22, which covers the additional requirements for managing electronic mail records. The aim is to clearly outline the records management requirements for electronic messages and systems.

These records management regulatory priorities align with the goals and initiatives of our Strategic Plan 2022–2026.

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## NATIONAL SCIENCE FOUNDATION

### Overview

The National Science Foundation (NSF) is an independent federal agency created by Congress in 1950 “to promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense . . .” NSF is vital because we support basic research and people to create knowledge that transforms the future. This type of support:

- Is a primary driver of the U.S. economy
- Enhances the nation's security
- Advances knowledge to sustain global leadership

With an annual budget of \$9.5 billion (FY 2023), we are the funding source for approximately 23% of the total federal budget for basic research conducted at U.S. colleges and universities. In many fields such as mathematics, computer science and the social sciences, NSF is the major source of federal backing.

We fulfill our mission chiefly by issuing limited-term grants—currently about 11,200 new awards per year, with an average duration of three years—to fund specific research proposals that have been judged the most promising by a rigorous and objective merit-review system. Most of these awards go to individuals or small groups of investigators. Others provide funding for research centers, instruments and facilities that allow scientists, engineers, and students to work at the outermost frontiers of knowledge.

NSF's goals—discovery, learning, research infrastructure and stewardship—provide an integrated strategy to advance the frontiers of knowledge, cultivate a world-class, broadly inclusive science and engineering workforce and expand the scientific literacy of all citizens, build the nation's research capability through

investments in advanced instrumentation and facilities, and support excellence in science and engineering research and education through a capable and responsive organization. We like to say that NSF is “where discoveries begin.”

NSF is committed to expanding the opportunities in STEM to people of all racial, ethnic, geographic, and socioeconomic backgrounds, sexual orientations, gender identities and to persons with disabilities.

We value diversity and inclusion, demonstrate integrity and excellence in our devotion to public service and prioritize innovation and collaboration in our support of the work of the scientific community and of each other.

While broadening participation in STEM is included in NSF’s merit review criteria, some programs go beyond the standard review criteria. These investments—which make up NSF’s Broadening Participation in STEM Portfolio—use different approaches to build STEM education and research capacity, catalyze new areas of STEM research, and develop strategic partnerships and alliances.

Many of the discoveries and technological advances have been truly revolutionary. In the past few decades, NSF-funded researchers have won some 236 Nobel Prizes as well as other honors too numerous to list. These pioneers have included the scientists or teams that discovered many of the fundamental particles of matter, analyzed the cosmic microwaves left over from the earliest epoch of the universe, developed carbon-14 dating of ancient artifacts, decoded the genetics of viruses, and created an entirely new state of matter called a Bose-Einstein condensate.

NSF also funds equipment that is needed by scientists and engineers but is often too expensive for any one group or researcher to afford. Examples of such major research equipment include giant optical and radio telescopes, Antarctic research sites, high-end computer facilities and ultra-high-speed connections, ships for ocean research, sensitive detectors of very subtle physical phenomena and gravitational wave observatories.

Another essential element in NSF’s mission is support for science and engineering education, from pre-K through graduate school and beyond. The research we fund is thoroughly integrated with education to help ensure that there will always be plenty of skilled people available to work in new and emerging scientific, engineering, and technological fields, and plenty of

capable teachers to educate the next generation.

No single factor is more important to the intellectual and economic progress of society, and to the enhanced well-being of its citizens, than the continuous acquisition of new knowledge. NSF is proud to be a major part of that process.

*Specifically, the Foundation’s organic legislation authorizes us to engage in the following activities:*

A. Initiate and support, through grants and contracts, scientific and engineering research, and programs to strengthen scientific and engineering research potential, and education programs at all levels, and appraise the impact of research upon industrial development and the general welfare.

B. Award graduate fellowships in the sciences and in engineering.

C. Foster the interchange of scientific information among scientists and engineers in the United States and foreign countries.

D. Foster and support the development and use of computers and other scientific methods and technologies, primarily for research and education in the sciences.

E. Evaluate the status and needs of the various sciences and engineering and take into consideration the results of this evaluation in correlating our research and educational programs with other federal and non-federal programs.

F. Provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and technical resources in the United States, and provide a source of information for policy formulation by other federal agencies.

G. Determine the total amount of federal money received by universities and appropriate organizations for the conduct of scientific and engineering research, including both basic and applied, and construction of facilities where such research is conducted, but excluding development, and report annually thereon to the President and the Congress.

H. Initiate and support specific scientific and engineering activities in connection with matters relating to international cooperation, national security, and the effects of scientific and technological applications upon society.

I. Initiate and support scientific and engineering research, including applied research, at academic and other nonprofit institutions and, at the direction of the President, support applied research at other organizations.

J. Recommend and encourage the pursuit of national policies for the promotion of basic research and education in the sciences and

engineering. Strengthen research and education innovation in the sciences and engineering, including independent research by individuals, throughout the United States.

K. Support activities designed to increase the participation of women and minorities and others underrepresented in science and technology. The Louis Stokes Alliances for Minority Participation (LSAMP) program is an alliance-based program. The program’s theory is based on the Tinto model for student retention referenced in the 2005 LSAMP program evaluation (cleared under 3145–0190 and now covered by 3145–0226). The overall goal of the program is to assist universities and colleges in diversifying the nation’s science, technology, engineering, and mathematics (STEM) workforce by increasing the number of STEM baccalaureate and graduate degrees awarded to populations historically underrepresented in these disciplines: African Americans, Hispanic Americans, American Indians, Alaska Natives, Native Hawaiians, and Native Pacific Islanders. LSAMP’s efforts to increase diversity in STEM are aligned with the goals of the Federal Government’s five-year strategic plan for STEM education, *Charting a Course for Success: America’s Strategy for STEM Education*.

With this fall regulatory agenda, NSF highlights the *Robert Noyce Teacher Scholarship (Noyce) Program (RIN 3145–AA65)*. This program provides funding to institutions of higher education for scholarships to STEM major undergraduates and professionals to become effective certified K–12 STEM teachers and experienced, exemplary K–12 teachers to become master teacher leaders in high-need school districts. Undergraduate and post-baccalaureate STEM professionals receiving funding must teach two years in a high-need school district for each year in which they have received financial support. Post-baccalaureate STEM professionals must teach for four years in a high-need school district during which time they receive annual salary supplements from the grant funds. Experienced, exemplary K–12 teachers of mathematics or science in high-need school districts receiving financial support may be supported for one year in obtaining a master’s degree and then receive a salary supplement from grant funds for four years as they continue to teach in a high-need school district. Individuals who already possess a master’s degree can be supported for five years with salary supplements from grant funds as they continue to teach in a high-need school



district. NSF, in consultation with the Secretary of Education, plans to propose regulations on the process of treating scholarships as Federal unsubsidized student loans for repayment purposes when the scholarship recipients fail to meet their required service obligations under the Noyce Program.

Consistent with the President's Executive Order on Modernizing Regulatory Review (Apr. 6, 2023), NSF intends to consider a variety of methods, beyond publication of the proposed regulation for public comment in the **Federal Register**, to encourage the participation and input of potentially affected individuals and entities. These additional efforts may include notices, bulletins, emails, phone calls, meetings, surveys, "office hours," or other means of communication, information gathering, and dialogue with academic institutions that receive or have received Noyce scholarship funding, as well as similar outreach, by NSF or these institutions, to past and present individual Noyce scholarship recipients, to obtain their views.

In addition, NSF regularly seeks feedback from customers in the form of information collections under the Paperwork Reduction Act (PRA). NSF maintains three generic PRA clearances allowing the Agency to rapidly engage the public: two clearances allow NSF to collect customer feedback on service delivery for NSF programs such as principal investigator workshops and website redesigns (OMB Control Number 3145-0215, *Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery* and OMB Control Number 3145-0254, *Generic Clearance for Improving Customer Experience (OMB Circular A-11, Section 280 Implementation)*), and a third to allow NSF to collect information for evaluation, research, and evidence building in order to improve surveys conducted by the National Center for Science, Engineering and Statistics programs (OMB Control Number 3145-0174, *SRS-Generic Clearance of Survey Improvement Projects for the Division of Science Resources Statistics*). Additional information regarding these collections—including all background materials—can be found at <https://www.reginfo.gov/public/do/PRAMain>.

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## U.S. OFFICE OF PERSONNEL MANAGEMENT

### Statement of Regulatory and Deregulatory Priorities

#### Fall 2023 Unified Agenda

The Office of Personnel Management (OPM) serves as the chief human resources agency and personnel policy manager for the Federal Government. We are champions of talent for the Federal Government, leading Federal agencies in workforce policies, programs, and benefits in service to the American people. We seek to position the Federal Government as a model employer through innovation, inclusivity, and leadership, as we build a rewarding culture that empowers the Federal workforce to tackle some of our nation's toughest challenges.

OPM's regulatory agenda is aligned with these core mission areas and advances multiple Biden-Harris Administration priorities. Indeed, each of OPM's regulations is focused on improving the efficiency and effectiveness of government—a key Administration priority. In addition, several of OPM's regulations are:

- Actions that empower workers and increase their wages;
- Actions that promote racial and gender equity and LGBTQI+ equality and address issues of disability, religious discrimination, persistent poverty, and immigration;
- Actions that address pandemic preparedness and access to healthcare; and
- Actions that improve access to and delivery of public programs and services by reducing administrative burden.

While OPM is committed to promoting inclusiveness in the regulatory process, most of our regulations are focused on organizational and personnel matters and, therefore, agency engagement with the general public is limited. In cases where OPM regulations do have public impact, OPM actively engages with stakeholders who may be affected by our regulations directly or indirectly through the social groups they represent. Public participation through petitions, job fairs, webinars, meetings, and the public comment process have informed the development of a few of our rulemakings at the initiation phase of the process and are summarized in this Statement, where applicable. Generally, however, OPM's engagement in developing its regulatory program focuses on engagement with agencies (such as through the Chief Human Capital Officers Council) and employee representative groups (such as labor unions).

We will continue to encourage and provide opportunities for meaningful participation to inform regulatory planning in the future.

#### I. Actions That Empower Workers and Increase Their Wages

OPM is committed to recruiting, retaining, and supporting a world-class Federal workforce. This means providing pathways to Federal service, working to make every Federal job a good job, and strengthening Federal labor unions. OPM's regulatory agenda advances each of these goals and reflects the inputs received from members of the public during different phases of the rulemaking process.

##### • Pathways Programs (3206-AO25)

OPM is finalizing modifications to the Pathways Programs to align the three constituent programs to better meet the Federal government's needs for recruiting and hiring interns and recent graduates. OPM proposes to update the regulations for the Pathways Programs to facilitate a better applicant experience, to improve developmental opportunities for Pathways Program participants, and to streamline agencies' ability to hire participants in the Pathways Programs, especially those who have successfully completed their Pathways requirements and are eligible for conversion to a term or permanent position in the competitive service. Robust Pathways Programs with appropriate safeguards to promote its use as a supplement to, and not a substitute for, the competitive hiring process is essential to boosting the Federal government's ability to recruit and retain early career talent.

This rule was informed by feedback from various stakeholders over the past decade, including applicants, educational institutions, Federal employees, and agencies. Major sources of this feedback include outreach events like job fairs and presentations/webinars on the Pathways Programs. Email inquiries from applicants and participants about how the Programs work provided additional opportunities to receive feedback. Based on these inputs, OPM is modifying current regulations to allow Recent Graduate and Presidential Management Fellows participants to be converted to term or permanent positions in any agency, when appropriate. After publishing the proposed rule, OPM further engaged stakeholders to ensure awareness and encourage the submission of comments that may inform the development of the final rule.

• *Time-Limited Promotions [3206–A052]*

The Office of Personnel Management (OPM) is issuing a proposed rule to clarify that bargaining-unit employees who are detailed or temporarily promoted to higher grade duties of a higher-graded position should be paid appropriately for performing these duties, when ordered by an arbitrator, administrative body, or court, under a collective bargaining agreement and the employees were assigned these duties outside of competitive hiring procedures. Similarly, the proposed rule clarifies that non-bargaining unit employees should also be paid appropriately for performing these duties if ordered by an administrative body or court. At present, non-competitive temporary promotions and non-competitive details to duties of higher-graded positions are limited to no more than 120 days under OPM regulations regardless of the bargaining-unit status of the employee. Current regulations prohibit employees from being appropriately paid for higher-graded duties performed in excess of 120 days and assigned without competition. As a result, the principle of equal pay for equal work is absent and bargaining unit employees are unable to have meaningful recourse through their negotiated collective bargaining agreement.

OPM's decision to issue this proposed rule was informed by engagement with the National Treasury Employees Union (NTEU) and the National Federation of Federal Employees (NFFE). In 2022, NTEU submitted a written petition to OPM seeking the issuance of a rule under 5 U.S.C. 553(e). This petition outlined the problem to be addressed with recommended changes. In addition, NFFE raised similar suggestions in meetings with OPM in late 2022. When the proposed rule is issued, OPM anticipates further engagement with national unions and other Federal employee groups.

• *Upholding Civil Service Protections and Merit System Principles [3206–A056]*

OPM plans to finalize a rule to uphold civil service protections and merit system principles after consideration of comments on OPM's proposal. OPM proposed to clarify that employees who are moved involuntarily from the competitive to the excepted service, or from one excepted service schedule to another, retain the status and adverse action rights they had at the time of movement. OPM's proposal also required Federal agencies to follow

specific procedures upon moving any employees without their consent from the competitive service to the excepted service or, if already in the excepted service, to a different excepted service schedule. Finally, OPM proposed to define positions of a "confidential, policy-determining, policy-making, or policy-advocating character," in accordance with legislative history and Congressional intent, to mean political appointments.

In late 2022, the National Treasury Employees Union (NTEU) submitted a written petition to OPM outlining their views on regulatory changes that would reinform civil service protections and merit system principles. Subsequently in early 2023, the Federal Workers Alliance (FWA) sent a letter to OPM expressing support for the NTEU petition. OPM anticipates engagement with national unions and other Federal employee groups during the notice and comment period as part of the standard regulatory process.

**II. Actions That Promote Racial and Gender Equity and LGBTQI+ Equality and Address Issues of Disability, Religious Discrimination, Persistent Poverty, and Immigration**

In fact, many of the regulations noted above—in particular, those focused on providing pathways into the Federal Government—emphasize equity. Additional work in this area focuses on promoting pay equity and OPM has made efforts to encourage feedback on the proposals from stakeholders.

• *Advancing Pay Equity in Governmentwide Pay Systems (3206–A039)*

OPM is issuing a final rule to advance pay equity in the General Schedule (GS) pay system, Prevailing Rate Systems, Administrative Appeals Judge (AAJ) pay system, and Administrative Law Judge (ALJ) pay system by revising the criteria for making salary determinations based on salary history. After the proposed rule was published, OPM shared it with more than 990 stakeholders to ensure awareness and encourage the submission of comments that may inform the development of the final rule.

**III. Actions That Address Pandemic Preparedness and Access to Healthcare**

OPM has helped to lead the Federal Government throughout the COVID–19 pandemic—serving as a co-chair of the Safer Federal Workforce Task Force, supporting agencies with implementation of a maximum telework posture, and providing meaningful benefits to Federal employees. OPM will

continue this important work through its regulatory agenda.

• *Scheduling of Annual Leave for Employees Responding to COVID–19 (3206–A004)*

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–A034)*

OPM is proposing a new subpart Q within 5 CFR part 550, which would amend, expand, and reorganize regulations that currently provide agencies with the authority to evacuate employees during a pandemic health crisis. The revised regulations will provide agencies with the authority to evacuate an employee or groups of employees during either a public health emergency declaration or a pandemic health crisis. The current authority to evacuate employees during a pandemic health crisis is found at 5 CFR 550.409. This revision and reorganization of the regulations will enable OPM to capitalize on lessons learned from the COVID–19 pandemic.

• *Postal Service Health Benefits Program (3206–A043)*

OPM is finalizing an interim final rule that implemented the Postal Service Health Benefits (PSHB) Program within the Federal Employees Health Benefits (FEHB) Program pursuant to the Postal Service Reform Act of 2022. This regulation will ensure continuity of health insurance coverage for Postal Service employees, annuitants, and their family members who will no longer be eligible for FEHB in January 2025; enable enrollees access to more prescription drug coverage options and potential reduction in prescription drug costs for Medicare Part D eligible enrollees; reduce the Postal Service's premiums by approximately \$5.7 billion over 10 years (CBO Analysis) and reduce its future liability for retiree health benefits; and enable use of a central enrollment portal that will reduce administrative burden for enrollment, which will ensure more accurate payment of plans, allow more

frequent sharing of enrollment data with plans, and limit human error.

#### **IV. Actions That Improve Access to and Delivery of Public Programs and Services by Reducing Administrative Burden**

OPM's work in this area focuses on improving efficiency and providing agencies additional flexibilities in the hiring process.

- *Hiring Authority for Post-Secondary Students (3206–AN86)*

OPM is finalizing regulations establishing hiring authorities for post-secondary students to positions in the competitive service to provide additional flexibility in hiring eligible and qualified individuals. These revisions will implement section 1108 of Public Law 115–232, John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019.

- *Hiring Authority for College Graduates (3206–AN79)*

OPM is finalizing regulations establishing hiring authorities for certain college graduates to positions in the competitive service. This rule will provide additional flexibility in hiring eligible and qualified individuals by implementing section 1108 of Public Law 115–232, the NDAA for FY 2019.

- *Rule of Many (3206–AN80)*

OPM is finalizing regulations to implement changes—known as the “rule of many”—authorized by the NDAA for FY 2019 governing the selection of candidates from competitive lists of eligibles. The statute eliminates the requirement that an agency select only from the top three candidates at any given juncture (the rule of three) in numerical rating and ranking and instead authorizes agencies to certify and consider a sufficient number of candidates, no fewer than three, using a cut-off score or other mechanism established through this rulemaking. This change also affects how agencies may make selections under 5 CFR part 302, titled “Employment in the Excepted Service.” These changes will provide expanded flexibility to agencies in the selection of candidates.

- *Noncompetitive Appointment of Certain Military Spouses (3206–AO57)*

OPM is issuing interim final regulations to implement section 1111 of Public Law 117–263, the NDAA for FY 2023. These revisions extend the eligibility criteria for any spouse married to an active-duty military member through December 31, 2028, and remove the agency reporting

requirements established under section 573(d) of Public Law 115–232. The intended effect of the Authority is to increase the hiring of military spouses in the Federal Government.

- *Recruitment and Relocation Incentive Waivers (3206–AO36)*

OPM is issuing a proposed rule to expand the authority to approve waivers of the normal payment limitations on recruitment and relocation incentives, so that agencies have access to higher payment limitations based on a critical need without requesting approval from OPM. Currently, agencies have the authority to approve a recruitment or relocation incentive without OPM approval for payments of up to 25 percent of an employee's annual rate of basic pay times the number of years in a service agreement (not to exceed 4 years or 100 percent of annual basic pay). Under a waiver, agencies could approve a recruitment or relocation incentive without OPM approval for payments of up to 50 percent of an employee's annual rate of basic pay times the number of years in a service agreement (not to exceed 100 percent of annual basic pay).

- *Recruitment and Selection Through Competitive Examination (3206–AO24)*

OPM is finalizing revisions implementing the Competitive Service Act of 2015, Public Law 114–137, to allow an appointing authority (*i.e.*, the head of a federal agency or department) to share a competitive certificate of eligibles with one or more appointing authorities for the purpose of making selections of qualified candidates.

- *Selective Service Registration (3206–AO37)*

OPM is proposing regulations to enable executive agencies to make initial determinations as to whether failure to register with the Selective Service System was knowing and willful.

**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. In addition, PBGC administers a special financial assistance (SFA) program for eligible financially troubled multiemployer plans.

- *Single-Employer Program.* Under the single-employer program, when a plan terminates with insufficient assets to cover all plan benefits (distress and involuntary terminations), PBGC pays plan benefits that are guaranteed under title IV. PBGC also pays nonguaranteed plan benefits to the extent funded by plan assets or recoveries from employers. In fiscal year (FY) 2022, PBGC paid over \$7.0 billion in benefits to more than 960,000 participants. Operations under the single-employer program are financed by insurance premiums, investment income, assets from pension plans trusted by PBGC, and recoveries from the companies formerly responsible for the trustee plans.

- *Multiemployer Program.* The multiemployer program covers collectively bargained plans involving more than one unrelated employer. PBGC provides traditional financial assistance (technically in the form of a loan, though almost never repaid) to the plan if the plan is insolvent and thus unable to pay benefits at the guaranteed level. The guarantee is structured differently from, and is generally significantly lower than, the single-employer guarantee. In FY2022, PBGC provided \$217 million in traditional financial assistance to 115 insolvent multiemployer plans covering 93,525 participants receiving guaranteed benefits. Those plans also cover an additional 46,480 participants entitled to receive benefits in the future. PBGC also provided a final payment of \$9 million in financial assistance to facilitate the merger of two multiemployer plans. Operations under the multiemployer program generally are financed by insurance premiums and investment income.

- *Special Financial Assistance Program.* The American Rescue Plan (ARP) Act of 2021 added section 4262 of ERISA, which requires PBGC to provide SFA to certain financially troubled multiemployer plans upon application for assistance. PBGC's SFA Program requires plans to demonstrate eligibility for SFA and to calculate the amount of assistance pursuant to ARP and PBGC's regulations. This program is funded by general tax revenues.

For the second year in a row, both PBGC's Multiemployer Program and Single-Employer Program have a positive net position at fiscal year-end. The financial status of the single-employer program improved from a positive net financial position of \$30.9 billion at the end of FY 2021 to \$36.6 billion at the end of FY 2022. The net financial position of the multiemployer program improved from a positive net position of \$481 million at the end of FY 2021 to \$1.1 billion at the end of FY 2022.

ARP substantially improves the financial condition and the outlook for PBGC's multiemployer program. By forestalling the near-term insolvency of the most troubled multiemployer plans, the multiemployer program is no longer expected to go insolvent in FY 2026 and can accumulate a greater level of reserve assets in its insurance fund in the near-term.

To carry out its statutory functions, PBGC issues regulations on such matters as how to pay premiums, when reports are due, what benefits are covered by the insurance programs, how to terminate a plan, the liability for underfunding, and how withdrawal liability works for multiemployer plans. PBGC follows a regulatory approach that seeks to encourage the continuation and maintenance of securely-funded defined benefit plans. In developing new regulations and reviewing existing regulations, PBGC seeks to reduce burdens on plans, employers, and participants, and to ease and simplify employer compliance wherever possible. PBGC particularly strives to meet the needs of small businesses that sponsor defined benefit plans. In all such efforts, PBGC's mission is to protect the retirement incomes of plan participants.

### **Regulatory/Deregulatory Objectives and Priorities**

PBGC's regulatory/deregulatory objectives and priorities are developed in the context of the Corporation's statutory purposes, priorities, and strategic goals.

Pension plans and the statutory framework in which they are maintained and terminated are complex. Despite this complexity, PBGC is committed to issuing simple, understandable, flexible, and timely regulations to help affected parties. PBGC's regulatory/deregulatory objectives and priorities are:

- To enhance the retirement security of workers and retirees;
- To implement regulatory actions that ease compliance burdens and

achieve maximum net benefits while protecting retirement security; and

- To simplify existing regulations and reduce burden.

PBGC endeavors in all its regulatory and deregulatory actions to promote clarity and reduce burden on the public.

### **Small Businesses**

PBGC considers very seriously the impact of its regulations and policies on small entities. PBGC attempts to minimize administrative burdens on plans and participants, improve transparency, simplify filing, and assist plans to comply with applicable requirements. PBGC particularly strives to meet the needs of small businesses that sponsor defined benefit plans. In all such efforts, PBGC's mission is to protect the retirement incomes of plan participants.

### **Open Government and Public Engagement**

PBGC encourages public participation in the regulatory process. For example, PBGC's "Federal Register Notices Open for Comment" web page highlights when there are opportunities to comment on proposed rules, information collections, and other Federal Register notices. PBGC encourages comments on an ongoing basis as it continues to look for ways to further improve the agency's regulations. PBGC staff also actively participate in conferences focused on employee retirement benefits and engage with plan participant advocacy groups to understand where there may be concerns with PBGC regulations. Efforts to reduce regulatory burden in the projects discussed below are in substantial part a response to public comments and engagement.

### **American Rescue Plan**

The American Rescue Plan (ARP) Act of 2021 added a new section 4262 of ERISA to create a program to provide funding to severely underfunded multiemployer pension plans to ensure that millions of America's workers, retirees, and their families receive the pension benefits they earned through many years of hard work.

Under new section 4262 of ERISA, PBGC was required within 120 days to prescribe in regulations or other guidance the requirements for SFA applications. To implement the program, on July 9, 2021, PBGC released an interim final rule (RIN 1212-AB53) adding a new part 4262 to its regulations, "Special Financial Assistance by PBGC," which was published in the **Federal Register** on July 12, 2021. Part 4262 provides

guidance to multiemployer pension plan sponsors on eligibility, determining the amount of SFA, content of an application for SFA, the process of applying, PBGC's review of applications, and restrictions and conditions on plans that receive SFA. PBGC received over 100 public comments on many provisions of the interim rule including the methodology plans must use to calculate the amount of SFA, permissible investments of SFA funds, and the conditions imposed on plans that receive SFA. PBGC published a final rule on July 8, 2022, that makes various changes to part 4262 in response to public comments. The provisions of the final rule became effective on August 8. PBGC included a 30-day public comment period solely on the change to the condition to require a phased recognition of SFA assets for purposes of computing employer withdrawal liability. In response to comments received, PBGC added an exception process for the withdrawal liability conditions that apply to a plan that receives SFA, which was published in a final rule that was effective on January 26, 2023.

### **Multiemployer Plans**

PBGC published a proposed rule on October 14, 2022, that would prescribe actuarial assumptions which may be used by a multiemployer plan actuary in determining an employer's withdrawal liability (RIN 1212-AB54). Section 4213(a) of ERISA permits PBGC to prescribe by regulation such assumptions.

Benefit levels in a multiemployer plan are typically set by trustees representing contributing employers and unions. Withdrawal liability generally represents an employer's share of the plan's unfunded vested benefits (UVBs) that the plan may have at the end of the plan year immediately preceding the plan year in which the employer withdraws. Withdrawal liability is the portion of the UVBs allocable to the withdrawing employer and represents a plan's only opportunity to require a withdrawing employer to pay its allocated share of the unfunded liabilities. When a plan does not collect an adequate amount of withdrawal liability from a withdrawing employer or collects an amount that is less than a withdrawing employer's allocated share of the plan's UVBs, that burden is shifted to the remaining contributing employers in the plan. There is a higher likelihood that the plan will not be able to pay full accrued benefits, and ultimately, there is an increased likelihood that it would not have resources to pay basic (PBGC-

guaranteed) benefits. In that case, a plan may have to cut benefits to the PBGC guarantee level and apply to PBGC for financial assistance, which shifts costs to plan participants and to others in the multiemployer insurance system who fund PBGC via annual premiums.

The rulemaking is needed to clarify that a plan actuary's use of 4044 rates represents a valid approach to selecting an interest rate assumption to determine withdrawal liability. The rulemaking would thereby reduce or eliminate the cost-shifting effects of impediments to actuaries' use of 4044 rates. PBGC plans to publish a final rule that responds to the public comments received on the proposed rule.

PBGC also plans to propose a rulemaking that would add a new part 4022A to PBGC's regulations to provide guidance on determining the monthly amount of multiemployer plan benefits guaranteed by PBGC ("Multiemployer Plan Guaranteed Benefits," RIN 1212-AB37). For example, the proposed rule would explain what multiemployer plan benefits are eligible for PBGC's guarantee, how to determine credited service, how to determine a benefit's accrual rate, and how to calculate the guaranteed monthly benefit amount.

### Rethinking Existing Regulations

Most of PBGC's regulatory/deregulatory actions are the result of its ongoing retrospective review to identify and correct unintended effects, inconsistencies, inaccuracies, and requirements made irrelevant over time. For example, PBGC is proposing miscellaneous updates, clarifications, and improvements (RIN 1212-AB51) to its regulations that are in part a response to frequently asked questions and comments received from stakeholders, such as to annual financial and actuarial information filings (part 4010) and filings for termination of single-employer plans (part 4041). This action also addresses SECURE Act changes affecting premium rates (part 4006), benefits payable in terminated single-employer plans (part 4022), and part 4044 (allocation of assets in single-employer plans). PBGC's regulatory review also identified a need to improve PBGC's recoupment of benefit overpayment rules ("Improvements to Rules on Recoupment of Benefit Overpayments," RIN 1212-AB47). Other rulemakings would modernize PBGC's regulations and policies by adopting up-to-date assumptions and methods that are more consistent with best practices within the pension community. For example, PBGC is considering modernizing the interest, mortality, and expense load assumptions used to

determine the present value of benefits under the asset allocation regulation (for single-employer plans) and for determining mass withdrawal liability payments (for multiemployer plans) (RIN 1212-AA55) among other purposes.

### PBGC

#### Final Rule Stage

#### 225. Actuarial Assumptions for Determining an Employer's Withdrawal Liability [1212-AB54]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 29 U.S.C. 1393; 29 U.S.C. 1302(b)(3)

*CFR Citation:* 29 CFR 4213.

*Legal Deadline:* None.

*Abstract:* This final rule responds to public comments received on the proposed rule. It would prescribe actuarial assumptions which may be used by a multiemployer plan actuary in determining an employer's withdrawal liability.

*Statement of Need:* Benefit levels in a multiemployer plan are typically set by trustees representing contributing employers and unions. Withdrawal liability generally represents an employer's share of the plan's unfunded vested benefits (UVBs) that the plan may have at the end of the plan year immediately preceding the plan year in which the employer withdraws. Withdrawal liability is the portion of the UVBs allocable to the withdrawing employer and represents a plan's only opportunity to require a withdrawing employer to pay its allocated share of the unfunded liabilities. When a plan does not collect an adequate amount of withdrawal liability from a withdrawing employer or collects an amount that is less than a withdrawing employer's allocated share of the plan's UVBs, that burden is shifted to the remaining contributing employers in the plan. There is a higher likelihood that the plan will not be able to pay full accrued benefits, and ultimately, there is an increased likelihood that it would not have resources to pay basic (PBGC-guaranteed) benefits. In that case, a plan may have to cut benefits to the PBGC guarantee level and apply to PBGC for financial assistance, which shifts costs to plan participants and to others in the multiemployer insurance system who fund PBGC via annual premiums.

This rulemaking is needed to clarify that a plan actuary's use of 4044 rates represents a valid approach to selecting an interest rate assumption to determine withdrawal liability in all

circumstances. The rulemaking would thereby reduce or eliminate the cost-shifting effects of impediments to actuaries' use of 4044 rates.

*Anticipated Cost and Benefits:* PBGC estimates that, in the 20 years following the final rule's effective date, there will be a nominal increase in cumulative withdrawal liability payments ranging between \$804 million and \$2.98 billion. While PBGC expects that the rulemaking will deter employer withdrawals, it will do so only at the margin, and this impact is difficult to estimate. Accordingly, this analysis does not model any change to the rate of employer withdrawals or decrease in contributions due to improved plan funding attributable to these changes because doing so would be too speculative.

The major expenses associated with a withdrawal liability dispute are attorney fees, arbitration fees (including fees to initiate arbitration and fees charged by an arbitrator), and fees charged by expert witnesses. Though costs will vary greatly from plan to plan based on the plan's benefit formula, size of the plan, attorney and expert witness rates, and other factors, PBGC estimates that a withdrawal liability arbitration, measuring from a request for plan sponsor review of a withdrawal liability determination through the end of arbitration would range from \$82,500 to \$222,000. For lengthy litigation, costs can be over \$1 million. Assuming some arbitrations and litigation would be avoided entirely, and others would be less complex because they would not include disputes over interest assumptions, PBGC estimates that this rulemaking would result in an annual savings of \$500,000 to \$1 million, split evenly between plans and employers.

#### Timetable:

Action	Date	FR Cite
NPRM .....	10/14/22	87 FR 62316
NPRM Comment Period End.	11/14/22	
NPRM Comment Period Extended.	11/10/22	87 FR 67853
NPRM Comment Period End.	12/13/22	
Final Rule .....	11/00/23	

*Regulatory Flexibility Analysis Required:* No.

*Government Levels Affected:* None.

*Agency Contact:* Hilary Duke, Assistant General Counsel for Regulatory Affairs, Pension Benefit

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*RIN:* 1212-AB54

BILLING CODE 7709-02-P

## U.S. SMALL BUSINESS ADMINISTRATION

### Statement of Regulatory Priorities

#### Overview

The mission of the U.S. Small Business Administration (SBA or Agency) is to maintain and strengthen the nation's economy by helping Americans start, grow, and build resilient businesses and recover after disasters. In accomplishing this mission, SBA strives to improve the economic environment for small businesses, including those in rural areas, those in areas that have significantly higher unemployment and lower income levels than the nation's averages, and those in traditionally underserved markets.

SBA has several financial, procurement, and technical assistance programs that provide a crucial foundation for Americans starting or growing a small business. For example, the Agency serves as a guarantor of SBA program loans to small businesses and licenses Small Business Investment Companies that make equity and debt investments in qualifying small businesses using a combination of privately raised capital and SBA guaranteed leverage. SBA also helps small businesses, including those owned by women, service-disabled veterans, minorities, and other historically underrepresented groups, gain access to federal government contracting opportunities. In addition, the Agency funds various small business training and mentoring programs and provides management and technical assistance to existing or potential small business owners through grants, cooperative agreements, and contracts. Finally, as an essential part of its purpose, SBA provides direct financial assistance to homeowners, renters, and businesses to repair or replace their property in the aftermath of a disaster. Beyond providing a crucial foundation for business-owners, SBA's assistance to small businesses, including access to capital, generates new jobs to help create a strong, innovative, and sustainable American economy.

#### Reducing Burden on Small Businesses

SBA's regulatory policy reflects a commitment to developing regulations that reduce or eliminate the burden on

the public, particularly the Agency's core constituents—small businesses. SBA's regulatory process generally includes an assessment of the costs and benefits of the regulations as required by Executive Order No. 12866, 1993, "Regulatory Planning and Review"; Executive Order No. 13563, 2011, "Improving Regulation and Regulatory Review"; and the Regulatory Flexibility Act. SBA's program offices are particularly invested in finding ways to reduce the burden imposed on the public by the Agency's core activities in its loan, grant, innovation, and procurement programs.

#### Openness and Transparency

SBA promotes transparency, collaboration, and public participation in its rulemaking process. To that end, SBA makes a conscious effort to engage those members of the public eligible for SBA programs or affected by SBA regulations beyond the standard notice-and-comment process. SBA engages in tribal consultations when proposing changes to its government contracting regulations and often receives input on access and burdens associated with SBA program regulations and policies. For example, SBA conducted five tribal consultations or listening sessions about a proposal contained within the 8(a) Ownership and Control Rule (RIN 3245-AH70) mentioned below, leading to the elimination of the proposal in the final rule. For SBA's Small Business Innovation Research (SBIR) program, the Agency coordinates a road tour around the country, on which SBA and other agencies engage small businesses and provide them with information about the application process and upcoming SBIR topics for grant or contract awards. The Historically Underutilized Business Zones (HUBZones) program office regularly provides webinars about the program to prospective and current program participants, who are encouraged to provide feedback, and holds "office hours" twice a week, during which firms are encouraged to inquire about the certification process or provide feedback. SBA's Office of Government Contracting & Business Development (GCBBD) and its attorneys routinely attend trade association conferences concerning its programs, including the annual conferences hosted by the National 8(a) Association and HUBZone Council. SBA's 8(a) Business Development (BD) program office periodically uses its monthly *Straight Talk* call to obtain input from external stakeholders. For example, in fall 2022, the office invited stakeholders to provide feedback on ways to improve

the 8(a) application. SBA has also in the past entered interagency agreements with the Department of the Interior to conduct customer satisfaction surveys to gain a broad understanding of customer experience and customer satisfaction with the availability of information about SBA programs.

In addition to these program-specific efforts, SBA regularly seeks feedback from customers in the form of information collections under the Paperwork Reduction Act (PRA). SBA maintains two generic PRA clearances that allow the Agency to rapidly engage the public: one clearance allows SBA to collect customer feedback on service delivery for SBA programs such as GCBBD and Boots to Business, and the other allows SBA to collect information for evaluation, research, and evidence building in order to improve programs like GCBBD, Community Navigators, and SBA's capital programs.

#### Regulatory Framework

SBA's Strategic Plan for fiscal years 2022 through 2026 provides a framework for strengthening, streamlining, and simplifying SBA programs and leverages collaborative relationships with other agencies and the private sector to provide small businesses with the tools they need to drive innovation and strengthen the economy through business revenue and job growth. The Strategic Plan serves as the foundation for the regulations that the Agency will develop during the next twelve to twenty-four months.

SBA developed the Strategic Plan in consultation with multiple stakeholder groups through its *Strategic Plan Working Group*, which comprised members at all levels of SBA and across numerous Agency programs, allowing the themes revealed during the stakeholder engagement process to be incorporated throughout the Agency. SBA also partnered with the General Services Administration (GSA) to solicit input and feedback from federal employees whose roles support the implementation of SBA programs across the government or who work with other small business development programs. In addition, the Agency conducted community outreach across the country, including by conducting listening sessions with community development organizations in eight cities, from Portland, Maine, to Portland, Oregon, which provided SBA with input from entrepreneurs of all kinds and highlighted place-based and sector-specific issues. Finally, SBA solicited feedback through the **Federal Register**, *SBA.gov* posting, an SBA daily newsletter, a social media campaign,

and outreach to key stakeholder organizations.

Based on the input received during this stakeholder engagement process, SBA identified the following imperatives and integrated them into its Strategic Plan: increase collaboration with resource partners and stakeholders to amplify SBA's reach and better communicate the Agency's products and services, and improve SBA's data transparency so that researchers, resource partners, community organizations, and the public can better understand how the SBA supports the small business and entrepreneurial ecosystem. The Strategic Plan, in turn, sets out three strategic goals: (1) ensure equitable and customer-centric design and delivery of programs to support small businesses and innovative startups; (2) build resilient businesses and a sustainable economy; and (3) implement strong stewardship of resources for greater impact.

The regulations reported in SBA's semi-annual Regulatory Agenda and Plan are intended to facilitate achievement of these goals while meeting the needs of the members of the public eligible for our programs or affected by our regulations. Over the past twelve months, SBA developed rulemakings designed to support the Administration's Invest in America initiative and advance the country's economic growth and resiliency.

SBA continues to take regulatory action as necessary to adjust and adapt requirements for its programs to better support the country's economy. In the upcoming twelve to twenty-four months, SBA will focus on implementing recently finalized rules that increase competition in the market for small business credit, incentivize patient investments in innovative startups, and reduce barriers in access to capital for underserved communities. The Agency will also focus on advancing proposed rules that further remove barriers to credit across its loan programs for justice-involved entrepreneurs and make SBA's contracting and counseling programs accessible and impactful for a wider range of small businesses.

#### Administration's Priorities

To the extent possible and consistent with the Agency's statutory purpose, SBA will take action to support the Administration's priorities highlighted in the Fall 2023 Data Call for the *Unified Agenda of Federal Regulatory and Deregulatory Actions* (07/19/2023), namely: (1) tackling the climate change emergency; (2) advancing equity and supporting underserved, vulnerable,

and marginalized communities; (3) creating and sustaining good jobs with a free and fair choice to join a union, and promoting economic resilience in general; and (4) improving service delivery and customer experience and reducing administrative burdens. In fact, many of the Agency's rulemakings cut across multiple priorities. For example, SBA's amendments to Small Business Investment Company (SBIC) program regulations (RIN 3245-AH90, described below) not only support the Administration's priority to advance equity and support underserved communities, but also aim to improve SBA response times and enable SBA to focus on customer relationships and monitoring funds, efforts that broadly advance the Administration's fourth priority. Highlighted below are some of SBA's most important regulatory actions arranged by Administration priority, including actions SBA has completed since the spring 2023 Unified Agenda and actions that SBA plans to take in the upcoming 12–24 months.

#### *Priority (1)—Actions That Tackle the Climate Change Emergency*

Over the past year, SBA has continued to make efforts toward its a multi-year priority goal to help prepare and rebuild resilient communities by enhancing communication efforts for disaster mitigation. Under the Small Business Act, SBA is authorized to make disaster loans for efforts to repair, rehabilitate, or replace property damaged or destroyed as a result of a disaster. SBA's regulations in 13 CFR part 123 contain the legal framework for the SBA Disaster Loan program, which delivers SBA financing specifically targeted for pre-disaster and post-disaster mitigation projects. SBA can also tap into its other financing programs for funding to put toward disaster mitigation measures. No regulations are necessary to implement either of these options. In addition to its regulatory actions, SBA will continue to focus its efforts on educating the public on the benefits of investing in mitigation and resilience projects and on increasing awareness of SBA loan programs that small businesses can take advantage of to purchase, renovate, or retrofit buildings and equipment in order to reduce greenhouse gas emissions, improve energy efficiency, and enable the development of innovative solutions that support the green economy.

i. Disaster Assistance Loan Program Changes to Maximum Loan Amounts and Miscellaneous Updates (RIN 3245-AH91)

SBA continues to develop regulatory actions that enhance and modernize its procurement and capital assistance programs in order to combat the climate crisis. A direct final rule for the Disaster Loan program, effective July 31, 2023, aimed to increase disaster survivors' access to much needed funds to repair or replace damaged property by, among other things, increasing home loan lending limits, extending the deferment period, and expanding mitigation options.

Specifically, the final rule increased the lending limits on amounts for repair and replacement of disaster damaged real and personal property, for refinancing, for mitigation, and for contractor malfeasance. These were necessary changes as current home loan lending limits had not been adjusted since 1994, but inflation, housing prices, and construction and labor costs have increased over time. From 2018 through 2022, approximately 8.5% of borrowers were unable to fully restore their real estate and replace their personal property due to the current home loan lending limits. In some cases, the numbers were even higher; for example, 64.2% of recipients of home loans for damage caused by the 2021 Colorado Wildfires and 17.6% of such borrowers from Hurricanes Fiona and Ian were unable to fully restore their real estate and replace personal property. Before this rule, this shortfall was expected only to continue to increase and impact greater numbers of disaster survivors in other regions as disasters and disaster recovery becomes more frequent, widespread, and expensive. With respect to deferment periods, the final rule increased the initial deferment period from 5 months to 12 months, reducing the immediate financial burden for disaster survivors, a crucial change as repair and replacement timelines often extend beyond the prior 5-month deferment period. Additionally, the final rule expanded the allowable use of disaster loan funds used to protect damaged or destroyed real property from possible future "similar" disasters to simply all possible future disasters. By eliminating the word "similar," SBA has provided a disaster loan recipient the flexibility to use loan funds allocated for mitigation to protect against *any* type of disaster and thus better protect their property from future disasters. The amended regulations also allow the Administrator to increase the maximum loan amounts



to homeowners and renters under a specific disaster declaration based on appropriate economic indicators, such as current building costs, regional median home prices, and the Consumer Price Index (CPI) and the Producer Price Index (PPI) for the region(s).

As a direct final rule, the public was invited to comment until July 17, 2023. SBA did not receive significant adverse comment, and the rule became effective on July 31, 2023.

*Priority (2)—Actions That Advance Equity and Support Underserved, Vulnerable and Marginalized Communities*

SBA continues to make efforts to improve access of underserved communities to capital, federal government procurement and contracting opportunities, disaster assistance, and small business services like counseling and training. In addition to SBA's actions to promote access to its programs—namely addressing language, cultural differences, and socio-economic factors, expanding the lending network to groups that work with underserved communities, leveraging technology, and addressing the digital/technological divide—SBA continues to make efforts to identify gaps and develop a more targeted outreach by revising information collection instruments and commissioning federal statistical agencies to gather demographic data on programs participants and service recipients.

SBA also continues to explore regulatory actions that can supplement its Equity Action Plan objectives and support underserved, vulnerable, and marginalized communities. For example, SBA is prioritizing development of a rulemaking to standardize the regulatory requirements that govern its certification programs: the 8(a) BD program, HUBZone, the Women-Owned Small Business (WOSB) program, and the Veteran Small Business Certification program (VetCert). This is consistent with SBA's ongoing efforts to support businesses in underserved markets and remove barriers to entry in SBA's small business contracting programs. In addition, the final rule for the SBIC program (RIN 3245-AH90, discussed below) intends to implement Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, by reducing financial and administrative barriers to participation in the SBIC program and modernizing the program's license offerings to align with a more diversified set of new funds investing in underserved small businesses.

*i. Ownership and Control and Contractual Assistance Requirements for the 8(a) Business Development Program (RIN 3245-AH70)*

The 8(a) BD program helps firms owned and controlled by socially and economically disadvantaged individuals strengthen their ability to compete effectively in the economy by providing training and various forms of technical, financial, and procurement assistance. This final rule, effective April 27, 2023, made several changes to the program, including, among other things, recognizing a process for allowing a change of ownership in a former participant that is still performing one or more 8(a) contracts. Program regulations previously stated that a program participant awarded one or more 8(a) contracts could substitute one disadvantaged individual for another disadvantaged individual without requiring the termination of those contracts or a request for waiver. The rule clarified the regulation's language to make clear that, just like current program participants, former participants performing 8(a) contract(s) may change ownership, provided the new ownership claims a socially and economically disadvantaged status, without the requirement for contract termination or a waiver. As a result, individual entrepreneurs and entities (i.e., tribes, Alaska Native Corporations (ANCs), Native Hawaiian Organizations (NHOs), and Community Development Corporations (CDCs)) can acquire an existing platform of capabilities and past performance, as well as an established contract revenue stream with fewer administrative burdens.

In addition, the rule clarified that an applicant or participant firm that settles its debts with the federal government is not barred from participating in the program. Specifically, where a firm or its principals can demonstrate that any financial obligations owed have been settled and discharged by the federal government, that firm will be eligible for the 8(a) BD program. The rule also clarified that a business concern can use its successful performance of state, local, or federal government contracts to demonstrate its "potential for success," a requirement for program eligibility, and expanded the means by which tribally-owned businesses can demonstrate potential for success, by allowing such applicants to submit financial statements as evidence of their potential in lieu of federal income tax returns, which not all tribally-owned small businesses file. The rule also made several changes relating to 8(a) contracts, including clarifying that a

contracting officer cannot limit an 8(a) competition to participants having more than one certification (e.g., 8(a) and HUBZone), ensuring that 8(a) competition remains available to all eligible program participants. The rule clarified not only the prohibition against an agency requiring one or more other certifications in addition to its 8(a) certification, but also makes similar clarifications to the regulations for the SDVO, HUBZone, and WOSB programs.

The final rule reflects feedback SBA received during five tribal consultations and listening sessions about a proposal to add certain reporting and Community Benefits Plan requirements for entities having one or more participants in the 8(a) BD program. Based on that feedback, SBA eliminated the proposal in the final rule. In addition, the rule reflects extensive feedback in the form of over 650 comments received from 125 commenters, with most comments supporting the rule's substantive changes. SBA adopted suggested changes, made clarifications to the rule's language as appropriate, or explained its rationale for rejecting suggestions. In addition to accepting feedback on the rule in general, SBA sought comments on specific issues, including issues relating to 8(a) and Timber Set-Aside program waivers, sole-source 8(a) follow-on procurement, and Community Benefits Plans. SBA developed the sections of the final rule that were focused on these issues based on the feedback received.

*ii. Criminal Justice Reviews for the SBA Business Loan Programs and Surety Bond Guaranty Program (RIN 3245-AI03)*

SBA is proposing to amend regulations governing SBA's business loan programs (the 7(a) Loan program, 504 Loan program, Microloan program, Intermediary Lending Pilot (ILP) program, and Surety Bond Guarantee (SBG) program) and the Disaster Loan program (except for the COVID Economic Injury Disaster Loan (EIDL) program) to modify how SBA considers applicants with criminal history. The amendments are designed to improve equitable access based on criminal background review of applicants seeking to participate in one or more of these programs. After conducting a comprehensive study of SBA capital programs' current policies on individuals with criminal histories, SBA believes the proposed changes honor and incorporate the statutory mandates of 15 U.S.C. 631 that emphasize both the importance of small business development in general and SBA's responsibility to increase opportunities

for certain groups that historically may not have had equitable opportunities for small business ownership. Aside from these statutory mandates, the rule is based on how state and local governments and the private sector have broadened access to business capital and employment opportunities and is supported by data and empirical research demonstrating the public safety and economic benefits of such broadened access. Federal laws have also evolved regarding recidivism and second chances for formerly incarcerated individuals. SBA has determined that there is a need to update regulations to reduce barriers to participation in these programs for equitable support for small business entrepreneurs with criminal history records.

*Priority (3): Actions That Create and Sustain Good Jobs With a Free and Fair Choice To Join a Union and Promote Economic Resilience in General*

Small businesses form the foundation of the U.S. economy. They create two-thirds of net new jobs and drive American innovation and competitiveness. SBA continues to focus on helping small businesses develop economic resilience. SBA's Office of Capital Access has two goals: to increase the capital available to start and grow the small businesses that would not otherwise be able to access capital through conventional sources and to provide disaster assistance in the form of home and business loans for disaster survivors. SBA's loan guaranty and microloan programs provide credit-worthy small businesses with access to capital they would otherwise not receive because they cannot qualify for a loan under conventional credit standards. The Agency's disaster assistance programs help small businesses prepare for disasters and restore small businesses and their communities struck by disaster.

SBA aims to develop economic resilience not only in small businesses, but broadly within the U.S. economy, by helping ensure small businesses receive their fair share of federal contracting dollars. This is a crucial aspect of the government-wide effort to strengthen the federal supply chain. To that end, SBA continues to look for regulatory avenues to enhance its contracting assistance programs, which help small businesses win federal contracts. As noted, SBA is prioritizing development of a rulemaking that will standardize the certification requirements and process for SBA's contracting assistance programs—the 8(a) BD program, HUBZone, WOSB, and VetCert. The

streamlined certification regulations and process will eliminate unnecessary bureaucratic obstacles for eligible small businesses seeking multiple certifications, which will allow federal contracting dollars to flow more easily to eligible small businesses. The proposed updates will also ensure regulatory consistency among the programs to the extent possible. In streamlining the certification regulations and process, SBA aims to facilitate federal contracting of eligible small businesses, and thereby assist the federal government as a whole more effectively diversify its supply chains and strengthen its economic resilience. In addition, SBA continues to identify gaps in small business investment and develop rules that aim to plug those gaps.

i. Small Business Investment Company Investment Diversification and Growth (RIN 3245–AH90)

A final rule for the SBIC program, effective August 17, 2023, aims to significantly reduce barriers to program participation of new SBIC fund managers and funds investing in (i) underserved communities and geographies, (ii) capital intensive investments, and (iii) technologies critical to national security and economic development. SBA believes it must reduce barriers to participation and diversify its patient capital and long-term loan program to ensure long-term program stability and mission effectiveness.

The rule introduces new types of SBICs, termed Accrual SBICs and Reinvestor SBICs, through which SBA will increase program investment diversification and patient capital financing for small businesses. It also introduces a new Accrual Debenture for issuance by these Accrual SBICs. This new structure is intended to attract new investors by reducing perceived disadvantages of being an SBIC. The Accrual Debenture aligns with cash flows of equity-focused strategies by offering an alternative to a semi-annual interest payment Debenture structure for all SBIC licensees either (1) not taking a control-position in small businesses and or (2) with over 75% of capital earmarked for long-term equity investment in small businesses to help them grow and scale. This alternative structure accommodates a longer horizon for investments in small businesses that might require more patient capital. In introducing this new structure, SBA aims to increase the equity funding available to underserved small business owners and unlock equity as a source of funding for many

small business owners. Importantly, SBA believes it can offer this new structure while maintaining a zero-subsidy cost in the program.

During the rulemaking process, SBA received comments on both the rule and the SBIC program generally. SBA incorporated the recommendations of many of the comments, even those that were not directly within scope of the rulemaking. For example, in response to comments urging an expedited SBIC licensing process, SBA elected to introduce an expedited subsequent fund licensing process for eligible applicants and modify its standard operating procedures to increase transparency in the licensing process and decrease potential tail-end delays. SBA is also making efforts to implement recommendations that the Agency publish the names and dates of licensed SBICs in the **Federal Register**, collect certain data and financial metrics, and modernize certain aspects of the program, including the “reinvestment” restrictions which prohibit Section 301(c) Licensees from investing in a fund-of-funds capacity in emerging managers and licensing fees.

Among changes to the rule itself, after consideration of all public comments, SBA modified the final rule to make the Accrual Debenture available only to Accrual SBICs and Reinvestor SBICs, to align with the types of long-duration growth investing they primarily perform, and to exclude Standard SBICs, which may issue only Standard Debentures and Discount Debentures. This change limits the Accrual Debenture to SBICs that focus on stimulating small businesses. In addition, based on public comment, the final rule does not apply the new modified distribution waterfall to Standard Debenture Licensees, but instead applies it exclusively to the Accrual Debenture instrument. The final rule thus separated distribution requirements based on three categories of SBICs: (1) Non-leveraged Licensees; (2) Standard Debenture SBICs; and (3) Accrual SBICs and Reinvestor SBICs. SBA also decided against moving forward with modifications to Examination fees based on public comment. In addition, SBA modified the final rule to modify an exception to the restriction prohibiting licensees from making investments into relenders or reinvestors to permit reinvestors which are Accrual SBICs to make equity investments in certain underserved reinvestors.

*Priority (4): Actions That Improve Service Delivery, Customer Experience, and Reduce Administrative Burdens*

SBA continues to make efforts to improve service delivery and customer experience and reduce administrative burdens wherever possible. In fact, many of the rules already mentioned under other priorities aim to support this priority. For example, SBA's amendments to the Disaster Loan program (RIN 3245-AH91) removed a business loan limit on amounts for landscaping or recreational facilities. Prior to the removal, SBA would make exceptions to the limit based on documented functional need on a case-by-case basis. The change provides consistency with home loans, removes the need for administrative exceptions, and reduces administrative burden on the disaster survivor and SBA in securing resources to repair or replace damaged property. SBA's amendments to the 8(a) BD program (RIN 3245-AH70) advance this priority in several ways, including by making SBA's approval of a participant's business plan part of that participant's eligibility determination in certain situations, by streamlining the reapplication process for small businesses whose application was denied solely due to size that was later found to be small in connection with a formal size determination, providing that such applicants shall be immediately certified as eligible for the program, and by making it easier to meet the bona fide place of business requirement for 8(a) construction contracts (when imposed), which commenters noted would reduce overhead costs and provide needed flexibility to meet client needs more efficiently at a lower cost. And, as previously mentioned, SBA's amendments to the SBIC program (RIN 3245-AH90) include streamlined regulatory filing and reductions in duplicative data collections and bureaucratic processes to improve its response times and enable a greater focus on customer relationships and fund monitoring. For example, the rule allows approval to be granted at licensing of an SBIC's Total Intended Leverage Commitment, creates safe harbors for certain conflicts of interest that eliminate the need for explicit SBA approval, and allows automatic approval of GAAP-compliant valuations for non-leveraged licensees, changes which SBA believes will decrease the time and cost associated with applying for an SBIC license. In addition, SBA is prioritizing a rulemaking designed to standardize the regulatory requirements that govern its certification programs:

the 8(a) BD program, HUBZone, the WOSB program, and VetCert.

Following revisions to the requirements in SBA's 8(a) BD program and Service-Disabled Veteran-Owned Small Business (SDVOSB) programs, SBA is issuing conforming revisions to its affiliation rules that govern all small business procurement programs and to the WOSB

program. These revisions will ensure consistent requirements for ownership and control across SBA's procurement programs.

i. Affiliation in Small Business Procurement Program (RIN 3245-AH97)

SBA is proposing to amend its regulations on affiliation to expand access to credit and capital for small businesses, particularly those involved in government contracting. The proposed rule will address an inconsistency between SBA's affiliation rule and the rule on ownership and control in the SDVOSB program. On November 29, 2022, SBA published a final rule on procedures for certifying Veteran-Owned Small Business (VOSB) concerns and SDVOSB concerns. 87 FR 73400 (Nov. 29, 2022). That rule included changes to SBA's ownership and control rules for service-disabled veteran-owned small business concerns. In particular, SBA's rules allow a non-veteran to participate in certain extraordinary corporate decisions without causing the business to lose its veteran-owned status. SBA listed such extraordinary circumstances as: (1) the company's addition of a new equity stakeholder; (2) the dissolution of the company; (3) the sale of the company or all assets of the company; (4) the merger of the company; and (5) the company's declaration of bankruptcy. See also 83 FR 48908 (Sept. 28, 2018). Under that provision in the SDVOSB program, a non-veteran could have authority to do any of those five extraordinary actions, but SBA's affiliation rule still could cause the non-veteran's authority to be deemed ineligible as a small business concern under the negative control provision in 13 CFR 121.103(a)(3). Accordingly, this proposed rule makes the negative-control rule in SBA's affiliation rule consistent with ownership-and-control rules in the SDVOSB program. The proposal also would better define what stock holdings and merger agreements lead to affiliation.

ii. WOSB Program Updates and Clarifications (RIN 3245-AI04)

The WOSB regulations were updated in 2020 to implement a certification program as mandated by Congress.

Certified WOSB program participants are required to re-certify as to their eligibility every three years, which means the first group of firms will begin the re-certification process in October of 2023. In conjunction with this anniversary, SBA is updating the regulations for clarity and ease of use. After three years of feedback from applicants, program participants, contracting officers, advocacy groups, Congressional staffers, and the Small Business Procurement Advisory Council, among others, SBA looks forward to refining the regulations to provide clear, accessible guidance for all stakeholders.

SBA also plans to align WOSB regulations with SBA's other government contracting programs, such as VetCert and 8(a), where appropriate. Such changes are especially important because the WOSB program has certification reciprocity with both programs. The 8(a) regulations were significantly revised earlier this year, and the VetCert regulations are also new as of January, so the WOSB proposed updates will ensure regulatory consistency to the extent possible.

iii. Small Business Development Center Program Revisions (RIN 3245-AE05)

SBA plans to issue a final rule to update its regulations for the Small Business Development Centers (SBDC) program. The program links the resources of federal, state and local governments with the resources of the educational community and the private sector to provide assistance to the small business community. In partnership with SBA's Office of Small Business Development Centers (OSBDC) and District Offices, SBDCs develop business counseling and training programs, informational tools, and other services that enhance the economic development goals and objectives of SBA in their respective service areas and local funding partners. Although Congress has amended the statute authorizing the SBDC program at least 17 times, SBDC regulations have not been comprehensively updated since 1995. This final rule will incorporate updates to the Uniform Guidance, *i.e.*, the administrative requirements, cost principles, and audit requirements for federal awards. It will also align SBDC regulations with current SBA policy and guidance as well as modernize and clarify the regulations to be more efficient, effective, and transparent. Among other changes, the rule clarifies the role of the District Office regarding oversight activities, defines and clarifies the various roles, procedures, documents, and categories of funding,

and codifies the current Lead Center Director selection process used by SBDCs.

The intent of the changes is to make program operations less onerous for recipient organizations. Current program policies and requirements are set forth in the annual notice of funding opportunity and the SBDC cooperative agreements, in addition to the agency- and government-wide guidance, including the Uniform Guidance. The above changes will simplify these governing documents by moving select policy language to the regulations. In addition, by consolidating programmatic guidance, the rule will ensure consistency in program administration and enhance program oversight. The rule will also include policy and procedural changes identified by the Agency as necessary to preserve the integrity and legislative intent of the program.

Pursuant to the Small Business Act's requirement that SBA consult with the recognized association of SBDCs in any SBDC rulemaking action, SBA shared the draft proposed rule and subsequently met with *America's SBDC* in March 2022 to incorporate the association's feedback as appropriate and briefed the nationwide network during its Annual Conference and Spring Leadership meeting. SBA also participated in three tribal consultations that addressed the SBDC program, including the regulations. In addition, SBA considered the more than 400 comments on the proposed rule it received during the notice-and-comment process and is incorporating many of the suggestions in its revisions to the proposed rule. Nearly ten percent of the comments related to the ability of the networks to partner with local organizations to deliver services to small businesses. SBA intends to adopt the comments and expand and allow the SBDC Lead Center to partner not only with the institutions of higher education, but also with other community organizations, such as Chambers of Commerce.

## Conclusion

Through these and other regulatory actions, SBA aims to better help Americans start, grow, and build resilient businesses and recover after disasters and thereby strengthen the American economy. In developing its rules, the Agency will continue to advance the Administration's priorities to tackle the climate change emergency; advance equity and support underserved, vulnerable, and marginalized communities; create and sustain good jobs with a free and fair

choice to join a union and promote economic resilience in general; and improve service delivery and customer experience while reducing administrative burdens.

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## SOCIAL SECURITY ADMINISTRATION (SSA)

### I. Statement of Regulatory Priorities

We administer the Retirement, Survivors, and Disability Insurance programs under title II of the Social Security Act (Act), the Supplemental Security Income (SSI) program under title XVI of the Act, and the Special Veterans Benefits program under title VIII of the Act. As directed by Congress, we also assist in administering portions of the Medicare program under title XVIII of the Act. Our regulations codify the requirements for eligibility and entitlement to benefits and our procedures for administering these programs. Generally, our regulations do not impose burdens on the private sector or on State or local governments, except for the States' Disability Determination Services. However, our regulations can impose burdens on the private sector in the course of evaluating a claimant's initial or continued eligibility. We fully fund the Disability Determination Services in advance or via reimbursement for necessary costs in making disability determinations.

As we are developing our regulations, we seek to increase participation and engagement with members of the public affected by our regulations, including in the development of our regulatory priorities. In this Regulatory Plan, we note engagement efforts that have helped to inform our priorities to date. We seek to hear from members of the public who have not typically participated in the regulatory process.

The entries in our regulatory plan represent issues of major importance to the Agency. Through our regulatory plan, we intend to:

A. Simplify a specific policy within the SSI program by no longer considering food in In-Kind Support and Maintenance (ISM) calculations (RIN 0960-AI60);

B. Expand the definition of a Public Assistance (PA) Household to include an additional means-tested assistance program (RIN 0960-AI81);

C. Expand the rental subsidy exception beyond the seven states to which it already applies so that it applies nationwide (RIN 0960-AI82); and

D. Revise the disability adjudication process regarding how we consider past work to reduce the application time burden on claimants and expedite the disability application and determination process (RIN 0960-AI83).

### II. Regulations in the Proposed Rule Stage

We are not including any of our regulations in the proposed rule stage in this statement of regulatory priorities.

### III. Regulations in the Final Rule Stage

Our final regulations would expand the definition of a PA household for purposes of our programs to include the Supplemental Nutrition Assistance Program (SNAP) as an additional means-tested public income maintenance (PIM) program, decreasing the amount of income we would be required to deem to SSI applicants. This proposal reflects feedback we received from advocacy groups representing claimants and beneficiaries during listening sessions conducted under the authority of Executive Order (E.O.) 12866. These listening sessions took place in Fall 2022, during the development of the omitting food from the ISM calculations proposed rule. During the public comment period for the omitting food ISM proposed rule, several of these advocacy groups also submitted comments relating to the definition of PA household. Across both the listening session and the public comment submission, these groups expressed that the expansion of the definition of a PA household should include additional means-tested programs to help underserved families more easily access benefits. Advocates conveyed this was a top priority for them. (RIN 0960-AI81).

Our final regulations would also apply nationwide the ISM rental subsidy exception that is currently in place for SSI applicants and recipients residing in seven States, by recognizing that a "business arrangement" exists when the amount of required monthly rent equals or exceeds the presumed maximum value. This proposal would bring nationwide uniformity to our rules and improve equality in the application of the rental subsidy policy. This proposed rule was also informed by the Executive Order 12866 listening sessions conducted during the development of the omitting food from the ISM calculations regulation. (RIN 0960-AI82).

Our final regulations revise the period that we consider when determining whether an individual's past work is relevant for purposes of making disability determinations and decisions,

which would reduce the reporting burden for individuals seeking disability benefits and decrease the time associated with the overall disability application and decision process. The development of this proposed rule was informed by a listening session conducted by our Office of Communications with advocacy groups representing claimants and beneficiaries. (RIN 0960–AI83).

Lastly, our final regulations target changes to the ISM policy in our SSI program, including this regulation on food provided by others. The changes would simplify a specific policy within the SSI program by no longer considering food in the calculation of ISM. In Fall 2022, we heard from advocacy groups representing claimants and beneficiaries during two Executive Order 12866 listening sessions. We incorporated our listening session notes in the rulemaking record via [www.regulations.gov](http://www.regulations.gov), under docket SSA–2021–0014. (RIN 0960–AI60).

**Retrospective Review of Existing Regulations**

Pursuant to section 6 of Executive Order 13563, “Improving Regulation and Regulatory Review” (January 18, 2011), SSA regularly engages in retrospective review and analysis for multiple existing regulatory initiatives. These initiatives may be proposed or completed actions, and they do not necessarily appear in The Regulatory Plan. You can find more information on these completed rulemakings in past publications of the Unified Agenda at [www.reginfo.gov](http://www.reginfo.gov) in the “Completed Actions” section for the Social Security Administration.

**SSA**

Final Rule Stage

**226. Omitting Food From In-Kind Support and Maintenance Calculations [0960–AI60]**

*Priority:* Other Significant. Major under 5 U.S.C. 801.  
*Legal Authority:* 42 U.S.C. 902(a)(5); 42 U.S.C. 1381a; 42 U.S.C. 1382; 42 U.S.C. 1382a; 42 U.S.C. 1382b; 42 U.S.C. 1382c(f); 42 U.S.C. 1382j; 42 U.S.C. 1383; 42 U.S.C. 1382 note; . . .  
*CFR Citation:* 20 CFR 416.1102; 20 CFR 416.1130; 20 CFR 416.1131; 20 CFR 416.1103; 20 CFR 416.1104; 20 CFR 416.1121; 20 CFR 416.1124; 20 CFR 416.1132; 20 CFR 416.1133; 20 CFR 416.1140; 20 CFR 416.1147; 20 CFR 416.1148; 20 CFR 416.1149; 20 CFR 416.1157; . . .  
*Legal Deadline:* None.

*Abstract:* This final rule removes food from the calculation of In-Kind Support and Maintenance (ISM). Accordingly, we would calculate ISM based only on shelter expenses (*i.e.*, costs associated with room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services). The changes simplify our policy and promote equity by not disadvantaging an already vulnerable population when they receive food assistance.

In the Fall of 2022, we heard from advocacy groups representing claimants and beneficiaries during two E.O. 12866 listening sessions. We incorporated our notes in the rulemaking record via [www.regulations.gov](http://www.regulations.gov), under docket SSA–2021–0014.

*Statement of Need:* This change would remove food costs when we calculate ISM. By doing so, it streamlines the ISM policy and resulting SSI program complexity.

*Summary of Legal Basis:* We are removing food from our ISM calculations. This will streamline the policy and reduce the program complexity of ISM.

*Alternatives:* The current proposal streamlines the SSI process.

*Anticipated Cost and Benefits:* We estimate that implementation of this proposed rule for all eligibility and payment determinations effective April 1, 2023 and later will result in an increase in Federal SSI payments of a total of about \$1.5 billion over the period of fiscal years 2023 through 2032.

*Risks:* We do not anticipate risk to the integrity of our program.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/15/23	88 FR 9779
Final Action .....	03/00/24	

*Regulatory Flexibility Analysis Required:* No.  
*Small Entities Affected:* No.  
*Government Levels Affected:* None.  
*Agency Contact:* Scott Logan, Social Insurance Specialist, Social Security Administration, Office of Income Security Programs, 6401 Security Boulevard, Baltimore, MD 21235–6401, *Phone:* 410 966–5927, *Email:* [scott.logan@ssa.gov](mailto:scott.logan@ssa.gov).  
*RIN:* 0960–AI60

**SSA**

**227. Expand the Definition of a Public Assistance (PA) Household [0960–AI81]**

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.  
*Legal Authority:* 42 U.S.C. 405(a)  
*CFR Citation:* 20 CFR 416.1142; 416.1161; 416.1163; 416.1165.  
*Legal Deadline:* None.

*Abstract:* We propose expanding the definition of a Public Assistance (PA) Household to include additional means-tested assistance programs. This will decrease the number of applicants and recipients charged in-kind support and maintenance, which will simplify living arrangement development within the Supplemental Security Income (SSI) program.

This proposal reflects feedback we received from advocacy groups representing claimants and beneficiaries during listening sessions conducted under the authority of Executive Order (E.O.) 12866. These listening sessions took place during the development of the omitting food from the ISM calculations regulation in Fall 2022. We also received public comments submitted by these advocacy groups during the public comment period associated with the omitting food from ISM calculations NPRM. The Agency heard from these advocacy groups that the expansion of the definition of a PA household to include additional means-tested programs could help underserved families more easily access benefits and that this was a top priority.

*Statement of Need:* This change, adding SNAP to our regulatory definition of a public assistance household, would decrease the number of SSI applicants and recipients charged with in-kind support and maintenance (ISM). By doing so, it streamlines the ISM policy and resulting SSI program complexity, which supports the economic security of households who receive nutrition assistance.

*Summary of Legal Basis:* We are adding SNAP as a means-tested public income maintenance program to our regulatory definition of a public assistance household. This will streamline the policy and reduce the program complexity of ISM.

*Alternatives:* The current proposal streamlines the SSI process.

*Anticipated Cost and Benefits:* We estimate that implementation of this proposed rule would result in a total increase in Federal SSI payments of \$14.8 billion over fiscal years 2024 through 2033, assuming implementation of this rule on May 15, 2024.

*Risks:* We do not anticipate risk to the integrity of our program.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/29/23	88 FR 67148
NPRM Comment Period End.	11/28/23	
Final Action .....	04/00/24	

*Regulatory Flexibility Analysis**Required:* No.*Small Entities Affected:* No.*Government Levels Affected:* None.

*Agency Contact:* Tamara Levingston, Analyst, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, *Phone:* 410 966-7384, *Email:* tamara.levingston@ssa.gov.

*RIN:* 0960-AI81**SSA****228. Nationwide Expansion of the Rental Subsidy Policy for SSI Recipients [0960-AI82]***Priority:* Other Significant.*Legal Authority:* 42 U.S.C. 405(a)*CFR Citation:* 20 CFR 416.1130(b).*Legal Deadline:* None.

*Abstract:* We propose expanding the rental subsidy exception beyond the 7 states to which it already applies so that it applies nationwide. Accordingly, our nationwide policy would be that a business arrangement exists when the amount of monthly rent required to be paid equals or exceeds the presumed maximum value or the current market value, whichever is less. We expect that the proposed change would improve service delivery by making our policy uniform throughout the country and reducing administrative burdens for individuals seeking access to the Supplemental Security Income (SSI) program.

This was informed in part by the Executive Order 12866 listening sessions conducted during the development of the omitting food from the ISM calculations regulation.

*Statement of Need:* This proposal streamlines the agency's policy on In-Kind Support and Maintenance (ISM) and reduces SSI program complexity.

*Summary of Legal Basis:* Social Security Administration general rulemaking authority 42 U.S.C. 405(a); 42 U.S.C. 1383(d)(1).

*Alternatives:* The current proposal streamlines the SSI process.

*Anticipated Cost and Benefits:* We estimate that implementation of this proposed rule would result in a total increase in Federal SSI payments of \$971 million over fiscal years 2024 through 2033, assuming implementation of this rule on April 29, 2024.

*Risks:* We do not anticipate risk to the integrity of our program.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/24/23	88 FR 57910
NPRM Comment Period End.	10/23/23	
Final Action .....	04/00/24	

*Regulatory Flexibility Analysis**Required:* No.*Small Entities Affected:* No.*Government Levels Affected:* None.

*Agency Contact:* Tamara Levingston, Analyst, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, *Phone:* 410 966-7384, *Email:* tamara.levingston@ssa.gov.

*RIN:* 0960-AI82**SSA****229. Intermediate Improvement to the Disability Adjudication Process, Including How We Consider Past Work [0960-AI83]**

*Priority:* Section 3(f)(1) Significant. Major status under 5 U.S.C. 801 is undetermined.

*Legal Authority:* 42 U.S.C. 405(a); 42 U.S.C. 1383(d)(1)

*CFR Citation:* 20 CFR 404 Subpart P; 20 CFR 416 Subpart I; 20 CFR 404.1560(b); 20 CFR 416.960(b).

*Legal Deadline:* None.

*Abstract:* We propose to develop intermediate improvements to reduce the burden in our current disability adjudication process as a step towards longer-term reforms to ensure our disability program remains current and supports equitable outcomes. Actions could include decreasing the years of past work we consider when making a disability determination, as well as other potential regulatory changes.

The development of this regulation was informed by a listening session conducted by our Office of Communications with advocacy groups representing claimants and beneficiaries.

*Statement of Need:* Reducing the reporting requirements for prior work to a 5-year period instead of 15 years will reduce the burden on individuals seeking disability benefits while still providing us with enough relevant information to make accurate disability determinations and decisions.

*Summary of Legal Basis:* Social Security Administration general rulemaking authority 42 U.S.C. 405(a); 42 U.S.C. 1383(d)(1).

*Alternatives:* We make disability determinations consistent with statutes

and our current regulations. Taking actions such as exploring revising the definition of past relevant work would reduce the burden on individuals and improve customer service.

*Anticipated Cost and Benefits:* We estimate that implementation of the proposed rule would result in an increase in scheduled SSDI benefits of \$22.9 billion, a net reduction in scheduled old-age and survivors insurance (OASI) benefits of \$6.5 billion, and an increase in Federal SSI payments of \$3.9 billion in total over fiscal years 2024 through 2033, assuming implementation for all decisions made on or after May 6, 2024.

*Risks:* Risks not yet identified.*Timetable:*

Action	Date	FR Cite
NPRM .....	09/29/23	88 FR 67135
NPRM Comment Period End.	11/28/23	
Final Action .....	04/00/24	

*Regulatory Flexibility Analysis**Required:* No.*Small Entities Affected:* No.*Government Levels Affected:* None.

*Agency Contact:* Mary Quatroche, Director, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, *Phone:* 410 966-4794, *Email:* mary.quatroche@ssa.gov.

*RIN:* 0960-AI83**BILLING CODE 4191-02-P****FEDERAL ACQUISITION REGULATION (FAR)**

The Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space are members of the Federal Acquisition Regulatory Council (FAR Council), and jointly issue and maintain a single Government-wide procurement regulation known as the Federal Acquisition Regulation (FAR). The FAR provides uniform policies and procedures for the acquisition of supplies and services by executive agencies. The FAR Council, which is chaired by the Administrator of Federal Procurement Policy, assists in the direction and coordination of Government-wide procurement policies to be implemented in the FAR.

**Public Engagement**

The FAR Council engages with the public on rules that will affect the FAR in several ways. First, in addition to publishing abstracts of and anticipated publication dates for upcoming

rulemakings in the Office of Information and Regulatory Affairs biannual Unified Agenda, members of the public can track the progress of any open and pending FAR rule via the “Open FAR Cases” report, which is publicly available at [https://www.acq.osd.mil/dpap/dars/far\\_case\\_status.html](https://www.acq.osd.mil/dpap/dars/far_case_status.html). The report is updated on a weekly basis and includes the following information: a case number, title, FAR parts anticipated to be impacted by the rule, a summary of the basis for the rule, and the rule status. Members of the public who are interested in a particular FAR case are encouraged to monitor the Open FAR Cases Report to track where a particular rule is in the rulemaking process.

In addition to the Open FAR Cases report, the Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA) independently engage with several industry associations on a quarterly basis including, but not limited to, the Aerospace Industries Association, the National Defense Industrial Association, and the Professional Services Council. During these meetings, DoD, GSA, and NASA often provide updates on open FAR cases and association representatives are able to provide feedback from their various members or member groups on upcoming rulemakings.

While developing certain FAR rules, DoD, GSA, and NASA may seek input from the public by publishing in the **Federal Register** an advance notice of proposed rulemaking (ANPR) or a general request for information (RFI). Such notices normally include a summary of the overarching policy objectives of the rule and a list of questions seeking input that will help the Government develop a proposed rule. Information on whether DoD, GSA, and NASA plan on publishing an ANPR or RFI is included in both the Open FAR Cases Report and OIRA’s biannual Unified Agenda.

Occasionally, while a proposed or interim FAR rule is out for public comment, DoD, GSA, and NASA may hold a public meeting to provide an overview of the rule and allow the public to provide feedback to the Government in an open forum. Information about whether DoD, GSA, and NASA plan on holding a public meeting on a rule is normally included in the proposed or interim rule when it is published for public comment. Presentations made during the public meeting are included in the rule docket and made publicly available. Information provided during the public

meeting is also considered during development of the final rule.

DoD, GSA, and NASA are also rethinking the types of supporting documentation that should be published with proposed or interim rules to facilitate public understanding of the rule. For example, for FAR Case 2022–006, Sustainable Procurement (RIN: 9000–AO43), DoD, GSA, and NASA included, as a supporting document in the rule docket at [www.regulations.gov](http://www.regulations.gov), a slide show that illustrates the overarching restructuring of existing content in FAR part 23, a visual aid intended to make clear the extensive edits presented in the amendatory language of the rule.

Finally, DoD, GSA, and NASA independently conduct outreach to industry regarding upcoming rulemakings. For example, the GSA Federal Acquisition Service (FAS) holds webinars with its industry partners to provide an update on the current policy landscape, including summaries of upcoming FAR rules expected to have a significant impact on industry. As part of these webinars, which are available to the public at <https://buy.gsa.gov/interact/community/11/activity-feed>, GSA FAS includes information on the rulemaking process, how to monitor FAR and GSA FAR supplement rules, and best practices for submitting public comments.

### Rulemaking Priorities

Pursuant to Executive Order 12866, “Regulatory Planning and Review” (September 30, 1993), as reaffirmed and amended in Executive Order 13563, “Improving Regulation and Regulatory Review” (January 18, 2011), and Executive Order 14094, “Modernizing Regulatory Review” (April 6, 2023), the Regulatory Plan and Unified Agenda provide public notice about the FAR Council’s proposed regulatory and deregulatory actions within the Executive Branch. The Fall 2023 Unified Agenda consists of 56 active agenda items.

The FAR Council is required to amend the Federal Acquisition Regulation to implement statutory and policy initiatives. The FAR Council prioritization is focused on initiatives that:

- Tackle the climate change emergency,
- Advance equity and support underserved, vulnerable and marginalized communities,
- Promote economic resilience,
- Improve service delivery, customer experience, and reduce administrative burdens, and

- Support national security efforts, especially safeguarding Federal Government information and information technology systems.

### *Rulemaking That Tackles Climate Change*

FAR Case 2022–006, “Sustainable Procurement,” will implement requirements for the procurement of sustainable products and services per Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, and Office of Management and Budget Memorandum M–22–06. The rule will also reorganize FAR part 23 for consistency and clarity.

FAR Case 2021–015, “Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk,” will require major Federal suppliers to publicly disclose greenhouse gas emissions and climate-related financial risk, and to set science-based reductions targets per section 5(b)(i) of Executive Order 14030, “Climate-Related Financial Risk.”

FAR Case 2021–016, “Minimizing the Risk of Climate Change in Federal Acquisitions,” will ensure agencies minimize the risk of climate change and consider the social cost of greenhouse gas emissions in major procurements per section 5(b)(ii) of Executive Order 14030, “Climate-Related Financial Risk.” An advance notice of proposed rulemaking was published in October of 2021 seeking input from the public on ways in which the Government could consider greenhouse gas emissions and climate risks in Federal procurement. The feedback is being considered in the development of the proposed rule.

### *Rulemaking That Advances Equity and Supports Underserved Communities*

FAR Case 2022–009, “Certification of Service-Disabled Veteran-Owned Small Businesses,” will clarify the certification requirements for service-disabled veteran-owned small businesses (SDVOSB) concerns to be eligible for the award of a sole source or set-aside SDVOSB contract.

FAR Case 2021–011, “Past Performance Ratings for Small Business Joint Venture Members and Small Business First-Tier Subcontractors,” will permit small business first-tier subcontractors and joint venture members, in certain situations, to submit the past performance and experience they gained under these arrangements with their offers on Federal contracts. Contracting officers will be required to consider the capabilities and past performance provided by first-tier subcontractors and



joint venture members in certain situations.

FAR Case 2023–011, “Small Business Participation on Certain Multiple Award Contract,” will update and clarify market research, acquisition planning, small business coordination, and the use of set-asides during the placement of orders against certain multiple award contracts to increase small business participation in certain multiple award contracts.

#### *Rulemaking That Promotes Economic Resilience*

FAR Case 2022–004, “Enhanced Price Preference for Critical Items,” will add a list of critical items, along with their associated enhanced price preference, that will apply to acquisitions subject to the Buy American statute. This rule completes the framework added to the FAR as part of implementation of section 8 of Executive Order 14005, Ensuring the Future Is Made in All of America by All of America’s Workers.

FAR Case 2020–009, “List of Domestically Nonavailable Articles,” will amend the list of domestically nonavailable articles under the Buy American Act and the protocols to update the list. An advance notice of proposed rulemaking was published in May of 2020 seeking input from the public to assist in identifying domestic capabilities and for evaluating whether some articles on the list at FAR 25.104(a) should be removed because they are now mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. The feedback is being considered in the development of the proposed rule.

FAR Case 2022–011, “Nondisplacement of Qualified Workers Under Service Contracts,” will require contractors and subcontractors to offer qualified employees employed under predecessor contracts a right of first refusal of employment under successor contracts in accordance with Executive Order 14055, Nondisplacement of Qualified Workers Under Service Contracts and the associated Department of Labor regulations at 29 CFR part 9.

FAR Case 2022–003, “Use of Project Labor Agreement for Federal Construction Projects,” will require the use of project labor agreements for large-scale construction projects with a total estimated value of \$35 million or more in accordance with Executive Order 14063, Use of Project Labor Agreements for Federal Construction Projects. Project labor agreements are often effective in preventing labor-related

disruptions on projects by using dispute-resolution processes to resolve worksite disputes and by prohibiting work stoppages, including strikes and lockouts.

#### *Rulemakings That Improve Service Delivery and Customer Experience*

FAR Case 2019–015, “Improving Consistency Between Procurement & Non-Procurement Procedures on Suspension and Debarment,” will bring the procedures on suspension and debarment in the FAR into closer alignment with the Nonprocurement Common Rule (NCR) procedures, creating a more consistent experience for industry.

FAR Case 2021–001, “Increased Efficiencies with Regard to Certified Mail, In-person Business, Mail, Notarization, Original Documents, Seals, and Signatures,” will streamline certain essential contracting procedures by increasing flexibilities and efficiencies with regards to certified mail, in-person business, mail, notarization, original documents, seals, and signatures using digital and virtual technology. This rule makes permanent policy flexibilities introduced during the pandemic.

#### *Rulemakings That Support National Security*

FAR Case 2021–017, “Cyber Threat and Incident Reporting and Information Sharing,” will increase the sharing of information about cyber threats and incident information and require certain contractors to report cyber incidents to the Federal Government to facilitate effective cyber incident response and remediation pursuant to sections 2(b), (c), (g)(i) and 8(b) of Executive Order 14028, “Improving the Nation’s Cybersecurity.”

FAR Case 2021–019, “Standardizing Cybersecurity Requirements for Unclassified Information Systems,” will standardize cybersecurity contractual requirements across Federal agencies for unclassified information systems pursuant to sections 2(i) and 8(b) of Executive Order 14028, Improving the Nation’s Cybersecurity.

FAR Case 2023–002, “Supply Chain Software Security,” will require suppliers of software available for purchase by Federal agencies to comply with, and attest to complying with, applicable secure software development practices pursuant to section 4(n) and 4(k) of Executive Order 14028, Improving the Nation’s Cybersecurity, and Office of Management and Budget Memorandum 22–18 and 23–16.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

**BILLING CODE 6820-EP-P**

## **CONSUMER PRODUCT SAFETY COMMISSION (CPSC)**

### **Statement of Regulatory Priorities**

The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of death and injury associated with consumer products. To achieve this goal, CPSC, among other things:

- develops mandatory product safety standards or bans to address safety hazards, including where required by statute;
- obtains repairs, replacements, or refunds for defective products that present a substantial product hazard;
- develops information and education campaigns about the safety of consumer products;
- participates in the development or revision of voluntary product safety standards; and
- follows other statutory mandates.

Unless otherwise directed by congressional mandate, when deciding which of these approaches to take in any specific case, CPSC gathers and analyzes data about the nature and extent of the risk presented by the product. The Commission’s rules at 16 CFR 1009.8 require the Commission to consider the following criteria, among other factors, when deciding the level of priority for any particular project:

- the frequency and severity of injuries;
- the causality of injuries;
- chronic illness and future injuries;
- costs and benefits of Commission action;
- the unforeseen nature of the risk;
- the vulnerability of the population at risk;
- the probability of exposure to the hazard; and
- additional criteria that warrant Commission attention.

### **Significant Regulatory Actions**

Currently, the Commission is considering acting in the next 12 months on three rules—Regulatory Options for Table Saws (RIN 3041–AC31); Portable Generators (RIN 3041–AC36); and Gas Appliance Carbon Monoxide Sensors (RIN 3041–AD70)—which would constitute “significant regulatory actions” under the definition of that term in Executive Order 12866, although the Commission’s rulemaking is not subject to E.O. 12866 review.

These priority levels are included to provide an analogous criterion through which the Commission can provide this information to the public.

## CPSC

### Proposed Rule Stage

#### 230. Regulatory Options for Table Saws [3041–AC31]

*Priority:* Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

*Legal Authority:* 5 U.S.C. 553(e); 15 U.S.C. 2056; 15 U.S.C. 2058

*CFR Citation:* 16 CFR 1245.

*Legal Deadline:* None.

*Abstract:* In 2006, the Commission granted a petition asking that the Commission issue a rule to prescribe performance standards for an active injury mitigation (AIM) system to reduce or prevent injuries from contacting the blade of a table saw. The Commission subsequently issued a notice of proposed rulemaking (NPRM) that would establish a performance standard requiring table saws to limit the depth of cut to 3.5 millimeters when a test probe, acting as a surrogate for a human body/finger, contacts the table saw's spinning blade. Staff has conducted several studies to provide information for the rulemaking. Staff is assigned to submit a final rule briefing package to the Commission in fiscal year 2023.

*Statement of Need:* In the NPRM, the Commission preliminarily determined that there is an unreasonable risk associated with blade-contact injuries on table saws. Based on injury data reviewed in 2015, there were an estimated 33,400 table saw, emergency department treated injuries. Of these, staff estimated that 30,800 (92 percent) are likely related to the victim making contact with the saw blade. Of the 30,800 ED treated blade-contact injuries, an estimated 28,900 injuries (93.8 percent) involved the finger, with 4,700 amputations (15.2 percent).

*Summary of Legal Basis:* Table saws are consumer products that can be regulated by the Commission under the authority of the CPSA. See 15 U.S.C. 2052(a). Section 7 of the CPSA authorizes the Commission to promulgate a mandatory consumer product safety standard that sets forth performance requirements for a consumer product or that sets forth requirements that a product be marked or accompanied by clear and adequate warnings or instructions. 15 U.S.C. 20512084. Section 7(a) of the CPSA authorizes the Commission to promulgate a mandatory consumer

product safety standard that sets forth performance or labeling requirements for a consumer product if such requirements are reasonably necessary to prevent or reduce an unreasonable risk of injury. 15 U.S.C. 2056(a). Section 9 of the CPSA specifies the procedure that the Commission must follow to issue a consumer product safety standard under section 7 of the CPSA.

*Alternatives:* The Commission could (1) pursue table saw voluntary standard activities; (2) extend the effective dates of a possible rule; (3) exempt certain categories of table saws from the draft proposed rule; (4) limit the applicability of the performance requirements to some, but not all, tables saws; or (5) pursue an information and education campaign to inform the public of the hazards of blade contact and the benefits of the AIM technology.

*Anticipated Cost and Benefits:* The expected gross benefits range from about \$970 million to \$2.45 billion over the product life of 1 year of sales. The expected costs of the draft proposed rule will range from about \$168 million to about \$345 million annually. Based on staff's benefit and cost estimates, net benefits (*i.e.*, benefits minus costs) for the market were estimated to amount to about \$625 million to \$2.3 billion over the product life of 1 year of table saw sales.

*Risks:* The CPSC has determined preliminarily that there may be an unreasonable risk of blade-contact injuries associated with table saws. Each year, approximately 30,000 table saw blade contact injuries are treated in emergency room departments. The most common diagnoses in blade-contact injuries were lacerations (60 percent), fractures (20 percent), and amputations (10 percent).

#### Timetable:

Action	Date	FR Cite
Commission Decision to Grant Petition.	07/11/06	
ANPRM ..... Notice of Extension of Time for Comments.	10/11/11 12/02/11	76 FR 62678 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	

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	05/12/17 07/26/17	82 FR 22190
Public Hearing ..... Staff Sent 2016 NEISS Table Saw Type Study Status Report to Commission.	08/09/17 08/15/17	82 FR 31035
Staff Sent 2017 NEISS Table Saw Special Study to Commission.	11/13/18	
Notice of Availability of 2017 NEISS Table Saw Special Study.	12/04/18	83 FR 62561
Staff Sends a Status Briefing Package on Table Saws to Commission.	08/28/19	
Commission Decision.	09/10/19	
Staff Sends SNPRM Briefing Package to Commission.	09/21/23	
Commission Decision.	11/00/23	

#### Regulatory Flexibility Analysis

*Required:* Yes.

*Small Entities Affected:* Businesses.

*Government Levels Affected:*

Undetermined.

*Federalism:* Undetermined.

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

*Agency Contact:* Caroleene Paul, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, Phone: 301 987–2225, Email: cpaul@cpsc.gov.

*RIN:* 3041–AC31

## CPSC

#### 231. Safety Standard for Residential Gas Furnaces and Boilers [3041–AD70]

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

*Legal Authority:* 15 U.S.C. 2056; 15 U.S.C. 2058

*CFR Citation:* None.

*Legal Deadline:* None.

*Abstract:* Over several years, staff has conducted research and worked with voluntary standards organizations

concerning the risk of injury and death associated with carbon monoxide (CO) production and leakage from residential gas furnaces and boilers. This proposed rule would establish a performance requirement, under which gas furnaces or boilers would be required to shut off or modulate when CO levels reach a specified level for a specified duration of time. In 2019, the Commission issued an advance notice of proposed rulemaking (ANPRM) to initiate rulemaking under the Consumer Product Safety Act and requested comments on the risk of injury and alternative approaches to address the risk. On September 24, 2021, the Commission voted to change the fiscal year 2022 deliverable from a notice of proposed rulemaking (NPRM) to Data Analysis and/or Technical Review (DA/TR). On February 9, 2022, staff provided a summary and status update in a public briefing to the Commission. Staff continues to investigate sensing technology to automatically adjust or shut off major gas appliances, such as furnaces and boilers, in response to dangerous operating levels of carbon monoxide in their combustion products and will share its findings with the relevant voluntary standards organizations. Staff is finalizing an NPRM briefing package and will submit it to the Commission in fiscal year 2023.

**Statement of Need:** From 2014 through 2018, there were 108 deaths from CO poisoning from gas furnaces and boilers, with 30,587 nonfatal injuries in the same time period.

**Summary of Legal Basis:** This notice of proposed rulemaking is authorized by the CPSA. 15 U.S.C. 2051–2084. Section 7(a) of the CPSA authorizes the Commission to promulgate a mandatory consumer product safety standard that sets forth performance or labeling requirements for a consumer product if such requirements are reasonably necessary to prevent or reduce an unreasonable risk of injury. 15 U.S.C. 2056(a). Section 9 of the CPSA specifies the procedure that the Commission must follow to issue a consumer product safety standard under section 7 of the CPSA.

**Alternatives:** The Commission could: (1) continue to work and advocate for change through the voluntary standards process; (2) rely on the use of residential CO alarms; (3) continue to conduct education and information campaigns; and (4) take no action.

**Anticipated Cost and Benefits:** The proposed rule is estimated to avert 576 deaths (19.20 deaths per year) and 126,387 injuries (roughly 5,357 injuries per year) over 30 years. Overall, the draft proposed rule has total annualized

benefits of \$356.52 million, discounted at 3 percent, and for every \$1 in direct cost to consumers and manufacturers, the draft proposed rule generates \$0.59 in benefits from mitigated deaths and injuries.

**Risks:** For the 20-year period, 2000 through 2019, these products were associated with a total of 539 CO deaths.

**Timetable:**

Action	Date	FR Cite
Staff Sent ANPRM Briefing Package to Commission.	07/31/19	
Commission Voted to Publish ANPRM.	08/07/19	
ANPR Published in FR.	08/19/19	84 FR 42847
ANPRM Comment Period End.	10/18/19	
Staff Sent FR Notice to Commission to Reopen Comment Period.	10/23/19	
Commission Voted to Reopen Comment Period.	11/01/19	
Notice to Reopen Comment Period Published in FR.	11/07/19	84 FR 60010
ANPRM Comment Period End.	01/06/20	
Commission Vote to Change Deliverable from NPRM to DA/TR.	09/24/21	
Public Briefing to Commission.	02/09/22	
Staff Sends NPRM Briefing Package to Commission.	09/25/23	
Commission Decision.	11/00/23	

**Regulatory Flexibility Analysis Required:** No.

**Small Entities Affected:** No.

**Government Levels Affected:** None.

**Agency Contact:** Ronald Jordan, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, Phone: 301 987–2219, Email: [rjordan@cpsc.gov](mailto:rjordan@cpsc.gov).

**RIN:** 3041–AD70

**CPSC**

Final Rule Stage

**232. Portable Generators [3041–AC36]**

**Priority:** Section 3(f)(1) Significant. Major under 5 U.S.C. 801.

**Legal Authority:** 15 U.S.C. 2056; 15 U.S.C. 2058

**CFR Citation:** Not Yet Determined.

**Legal Deadline:** None.

**Abstract:** In 2006, the Commission issued an advance notice of proposed rulemaking (ANPRM) under the Consumer Product Safety Act (CPSA) concerning portable generators. The ANPRM discussed regulatory options that could reduce deaths and injuries related to portable generators, particularly those involving carbon monoxide (CO) poisoning. In fiscal year 2006, staff awarded a contract to develop a prototype generator engine with reduced CO in the exhaust. Also, in fiscal year 2006, staff entered into an interagency agreement (IAG) with the National Institute of Standards and Technology (NIST) to conduct tests with a generator, in both off-the-shelf and prototype configurations, operating in the garage attached to NIST's test house. In fiscal year 2009, staff entered into a second IAG with NIST with the goal of developing CO emission performance requirements for a possible proposed regulation that would be based on health effects criteria. After additional staff and contractor work, the Commission issued a notice of proposed rulemaking (NPRM) in 2016, proposing a performance standard that would limit the CO emission rates from operating portable generators. In 2018, two voluntary standards, UL 2201 and PGMA G300, adopted different CO-mitigation requirements intended to address the CO poisoning hazard associated with portable generators. Staff developed a simulation and analysis plan to evaluate the effectiveness of those voluntary standards' requirements. In 2019, the Commission sought public comments on staff's plan. In August 2020, staff submitted to the Commission a draft notice of availability of the modified plan, based on staff's review and consideration of the comments, for evaluating the voluntary standards; the Commission published the notice of availability in August 2020. In February 2022, staff delivered a briefing package to the Commission with the results of the effectiveness analysis and information on the availability of compliant generators in the marketplace. Staff concluded that the CO hazard-mitigation requirements of one standard are more effective than the

other, but conformance to either standard is low. Staff provided a supplemental NPRM (SNPRM) on portable generators to the Commission on March 8, 2023. The Commission published the SNPRM on April 20, 2023. The comment period closed on June 20, 2023. A final rule briefing package is scheduled to be sent to the Commission in fiscal year 2023.

**Statement of Need:** From 2004 through 2021, there were an annual average of 74 consumer CO poisoning deaths and an estimated 4,314 medically-attended consumer CO poisoning injuries caused by generators over this 18-year period. The Commission expects that the proposed rule would be highly effective in avoiding generator-related CO incidents, producing benefits that far exceed the estimated costs. For every \$1 in estimated direct cost to consumers and manufacturers, the proposed rule generates more than \$7 in benefits from mitigated deaths and injuries.

**Summary of Legal Basis:** This supplemental notice of proposed rulemaking is authorized by the CPSA, 15 U.S.C. 2051–2084. Section 7(a) of the CPSA authorizes the Commission to promulgate a mandatory consumer product safety standard that sets forth performance or labeling requirements for a consumer product if such requirements are reasonably necessary to prevent or reduce an unreasonable risk of injury. 15 U.S.C. 2056(a). Section 9 of the CPSA specifies the procedure that the Commission must follow to issue a consumer product safety standard under section 7 of the CPSA.

**Alternatives:** The Commission could (1) implement the draft proposed rule with the exception of the CO emission requirements and CO concentrations for shutoff included in voluntary standard UL 2201; (2) rely on voluntary standard stakeholders to adopt the requirements included in the draft proposed rule into either existing voluntary standard, UL 2201 or PGMA G300; (3) require portable generators to comply with either UL 2201 (2nd Edition; 2019) or PGMA G300–2018; or (4) rely on continued education and information campaigns.

**Anticipated Cost and Benefits:** The proposed rule is estimated to avert 2,148 deaths (nearly 72 deaths per year) and 126,387 injuries (roughly 4,213 injuries per year) over 30 years. Overall, the draft proposed rule has net benefits (benefits over and above costs) of \$897.06 million on an annualized basis at a 3 percent discount rate, and for every \$1 in direct cost to consumers and manufacturers, the draft proposed rule

generates \$7.02 in benefits from mitigated deaths and injuries.

**Risks:** As of May 10, 2022, CPSC databases contained reports of at least 770 generator-related consumer CO-poisoning deaths resulting from 588 incidents that occurred from 2011 through 2021.

**Timetable:**

Action	Date	FR Cite
Staff Sent ANPRM to Commission.	07/06/06	
Staff Sent Supplemental Material to Commission.	10/12/06	
Commission Decision.	10/26/06	
Staff Sent Draft ANPRM to Commission.	11/21/06	
ANPRM .....	12/12/06	71 FR 74472
ANPRM Comment Period End.	02/12/07	
Staff Releases Research Report for Comment.	10/10/12	
NPRM .....	11/21/16	81 FR 83556
NPRM Comment Period Extended.	12/13/16	81 FR 89888
Public Hearing for Oral Comments.	03/08/17	82 FR 8907
NPRM Comment Period End.	04/24/17	
Staff Sends Notice of Availability to the Commission.	06/26/19	
Commission Decision.	07/02/19	
Notice of Availability.	07/09/19	84 FR 32729
Staff Sends Notice of Availability to Commission.	08/12/20	
Commission Decision.	08/19/20	
Notice of Availability.	08/24/20	85 FR 52096
Staff Report on Effectiveness Evaluation of Voluntary Standards.	02/16/22	
Staff Sends (S)NPRM Briefing Package to Commission.	03/08/23	
Commission Decision.	04/05/23	
NPRM .....	04/20/23	88 FR 24346
NPRM Comment Period End.	06/20/23	
Staffs Sends Briefing Package to Commission.	11/00/23	

**Regulatory Flexibility Analysis Required:** Yes.

**Small Entities Affected:** Businesses.

**Government Levels Affected:** Undetermined.

**Federalism:** Undetermined.

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

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RIN: 3041–AC36

BILLING CODE 6355–01–P

## FEDERAL TRADE COMMISSION (FTC)

### Statement of Regulatory Priorities (2023)

The Federal Trade Commission is an independent agency charged with rooting out unfair methods of competition and unfair or deceptive acts or practices. Its mission is vital to the national interest because, when markets are fair and competitive, honest businesses and the public all benefit. The Commission also protects people who cannot protect themselves—from powerful corporate interests looking to squeeze out, trick, erode the wealth of, or otherwise undermine the economic autonomy of consumers. The Commission works to ensure well-functioning markets that protect people's economic freedom, choice, and liberty. The agency's vision is of "a vibrant economy fueled by fair competition and an empowered, informed public."<sup>1</sup>

The Commission has a unique set of tools to carry out its mission, such as its market study tool, as well as traditions like public workshops and open comment dockets, to receive a wide breadth of information about a topic on which it is considering making policy.<sup>2</sup> Another tool is its ability to issue rules.<sup>3</sup> The Commission is committed to deploying all its tools, including issuing

<sup>1</sup> Fed. Trade Comm'n, Strategic Plan for Fiscal Years 2022–2026, at 13 (Aug. 26, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf).

<sup>2</sup> See 5 U.S.C. 46(b); see also Fed. Trade Comm'n, A Brief Overview of the Federal Trade Commission's Investigative, Law Enforcement, and Rulemaking Authority (May 2021), <https://www.ftc.gov/about-ftc/mission/enforcement-authority>.

<sup>3</sup> See 5 U.S.C. 46(g).

new rules and updating old ones, to achieve its mission.

## I. The Commission Is Using All Available Tools To Advance Its Missions

### a. Rulemakings

The Administrative Procedure Act rulemaking process creates significant opportunity for public participation to ensure that the agency is making well-considered policy decisions.<sup>4</sup> The rulemaking process for rules issued under section 18 of the FTC Act creates additional procedures to ensure participation.<sup>5</sup> Pursuant to these statutes, the Commission has been actively engaging members of the public to solicit their input in the Commission's means of pursuing its mission to ensure fair and competitive markets. Accordingly, the Commission and its staff continue to study the problems that rules can address, publish rulemaking documents, and engage with stakeholders and the public.

As to newly proposed consumer-protection rulemakings or rulemaking proceedings, in December 2021, the Commission published an ANPR (advance notice of proposed rulemaking) focused on the impersonation of government and businesses.<sup>6</sup> None of the public comments submitted in response to the ANPR opposed proceeding with the rulemaking. The Commission subsequently issued a proposed rule in October 2022.<sup>7</sup> This NPRM (notice of proposed rulemaking) would make it unlawful for persons to misrepresent that they are or are affiliated with a government or government officer or a business or business officer.<sup>8</sup> It also would make it unlawful to provide the means and instrumentalities for violations set out in this proposed rule.<sup>9</sup> This NPRM offered interested parties the opportunity to request an informal hearing, if they wished to present their position orally.<sup>10</sup> The opportunity to make an oral statement at an informal hearing is afforded by section 18 of the Federal Trade Commission Act and implemented in the Commission's Rules of Practice. The Commission received a timely request for an informal hearing. The hearing was held on May 4, 2023.<sup>11</sup>

The Commission is reviewing comments submitted as part of the informal hearing along with those submitted in response to the Commission's NPRM.

On October 20, 2022, the Commission extended the comment period on another ANPR focused on issues concerning commercial surveillance and data security.<sup>12</sup> This ANPR described how Americans must routinely surrender their personal information to participate in basic aspects of modern life.<sup>13</sup> It canvassed the Commission's decades-long effort to protect Americans' privacy through case-by-case enforcement, policy work, and implementation of sectoral privacy laws, concluding that rulemaking could be a useful addition to the effort to protect individuals' personal privacy. The ANPR requested comment on 95 questions to ascertain whether unfair or deceptive practices relating to commercial surveillance and data security are prevalent and whether proceeding with one or more proposed rules is worthwhile.

Updating existing rules to meet new challenges is another important part of the Commission's rulemaking work. For example, as part of its regular review cycle, the Commission issued a NPRM proposing to revise its Health Breach Notification Rule to, among other things, clarify its scope, including its coverage of developers of many health applications; revise certain definitions; clarify what it means for a vendor of personal health records to draw PHR (personal health records) identifiable health information from multiple sources; modernize notice and expand the content of the notice.<sup>14</sup>

As part of the Eyeglass Rule regulatory review, the Commission hosted a public workshop<sup>15</sup> to explore information relating to the Rule changes proposed in its NPRM.<sup>16</sup> This workshop covered several topics, such as the costs and benefits related to the proposals set out in the NPRM. Staff is reviewing the 47 comments it received in response to this workshop.

The Commission also continues its general consumer protection work. For example, problematic negative option practices continue to be a source of consumer harm. These practices, among other things, saddle shoppers with recurring payments for products and services they never intended to purchase or did not want to continue buying. To address these ongoing

problems, the Commission proposed amending the current Negative Option Rule with the objective of setting clear, enforceable performance-based requirements for all negative option features in all media.<sup>17</sup> These proposed changes are designed to ensure consumers understand what they are purchasing, to allow them to cancel their participation without undue burden or complication, and to address the most important issues related to negative option marketing, including misrepresentations, disclosures, consent, and cancellation.

As for its competition mission, the Commission continues to explore whether new rules that specify "unfair methods of competition" prohibited by section 5 of the FTC Act would help achieve the agency's mission. In its most recent strategic plan, the Commission observed that "[r]ules . . . inform businesses and their legal advisers about antitrust risks and can deter anticompetitive mergers and business practices" and that promoting competition can benefit all market participants, including workers.<sup>18</sup> In January 2023, the Commission proposed a rule addressing non-compete clauses in the labor market.<sup>19</sup> The Commission's proposal discusses the startling prevalence of non-compete clauses in states where they are unenforceable, which can have a chilling effect on competitive conditions—just as enforceable clauses do. Clear rules that are easily understood help to clear up these misconceptions and achieve the desired results—in this case, more optimal job switching and matching. During the comment period for this NPRM, some commenters requested that this comment period be extended to give them additional time to respond; other commenters opposed such an extension and any potential delay. The Commission reviewed the extension requests and agreed to allow the public additional time to prepare and file comments. Thus, the comment period was extended until April 19, 2023, to provide commenters a total of 104 days from the public release of the NPRM.<sup>20</sup> To additionally ensure that all viewpoints were heard during the

<sup>17</sup> 88 FR 24716, 24726 (Apr. 24, 2023).

<sup>18</sup> Fed. Trade Comm'n, FTC Strategic Plan for Fiscal Years 2022 to 2026, at 16 (Aug. 26, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/fy-2022-2026-ftc-strategic-plan.pdf). Other competition problems could also be addressed by new rules. Cf. Exec. Order No. 14036, section 5(h)(i)–(vii) (July 9, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.

<sup>19</sup> 88 FR 3482 (Jan. 19, 2023).

<sup>20</sup> 88 FR 20441 (Apr. 6, 2023).

<sup>4</sup> Fed. Trade Comm'n, Public Participation in the Rulemaking Process, <https://www.ftc.gov/enforcement/rulemaking/public-participation-rulemaking-process>.

<sup>5</sup> See *id.*

<sup>6</sup> 87 FR 72901 (Dec. 23, 2021).

<sup>7</sup> 87 FR 62741 (Oct. 17, 2022).

<sup>8</sup> 87 FR at 62746, 62747.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 62741.

<sup>11</sup> 88 FR 19024–25 (Mar. 30, 2023).

<sup>12</sup> 87 FR 63738 (Oct. 20, 2022).

<sup>13</sup> 87 FR 51273 (Aug. 22, 2022).

<sup>14</sup> 88 FR 37819 (June 9, 2023).

<sup>15</sup> 88 FR 18266 (Mar. 28, 2023).

<sup>16</sup> 88 FR 248 (Jan. 3, 2023).

public comment period before determining how to proceed, the Commission also hosted a public forum on February 16, 2023, which examined this proposed rule and provided an opportunity for interested parties to directly share their experiences with non-compete clauses. In the months since proposing this rule, the Commission received more than 21,000 public comments, including from nurses, doctors, fast food workers, and hairdressers. Staff is reviewing the comments.

Also in furtherance of its competition mission, the Commission has been working for the past year with the Department of Justice (DOJ) to examine how the agencies can more readily detect potentially problematic mergers and acquisitions. Pursuant to the Hart-Scott-Rodino (HSR) Antitrust Improvements Act of 1976, the Commission, with the concurrence of the DOJ Assistant Attorney General, issues rules to ensure that the agencies receive the information needed to identify anticompetitive mergers and investigate them fully to determine whether to seek to block any the effect of which may be substantially to lessen competition or to tend to create a monopoly. After conducting a comprehensive review of the information that market participants currently submit in premerger notification filings, the Commission initiated a rulemaking to propose the collection of additional information that the agencies need to more effectively and efficiently identify transactions that warrant deeper investigation.<sup>21</sup> This proposed rule would also implement provisions of the Merger Filing Fee Modernization Act of 2022, which requires companies to disclose information in their HSR filings about subsidies received from certain foreign governments and entities.

#### *b. Service Delivery*

The Commission also takes actions that improve service delivery and customer experience and that reduce administrative burdens for the public. For example, the Commission plans to issue a final rule by early 2024 to update the filing system for Hart-Scott-Rodino Form and Instructions to the new cloud-based e-filing system, which will eliminate paper filings. As part of this process, FTC staff engaged with internal and external customers, including usability testing of beta software processes for submitting electronic HSR filings.

In sum, the Commission continues seeking public input and learning from its law-enforcement, consumer-education, market-monitoring, and other work to identify additional opportunities for new or improved rules to complement its other tools and the vital work of partner agencies and the states. Meaningful public engagement in rulemakings or for improvements to service delivery can deliver important benefits to the public and honest businesses, so the Commission will continue to seek the views of all affected communities.

## **II. Updates on Other Ongoing Rulemakings**

### *a. Periodic Regulatory Review Program*

In 1992, the Commission implemented a program to review its rules and guides on a regular basis. The Commission's review program is patterned after provisions in the Regulatory Flexibility Act, 5 U.S.C. 601–612, and complies with the Small Business Regulatory Enforcement Fairness Act of 1996. The Commission's review program is also consistent with section 5(a) of Executive Order 12866, which directs executive branch agencies to reevaluate periodically all their significant regulations.<sup>22</sup> Under the Commission's program, rules and guides are typically reviewed on a ten-year schedule that results in more frequent reviews than are generally required by the Regulatory Flexibility Act. The public can obtain information on rules and guides under review and the Commission's regulatory review program generally at <https://www.ftc.gov/enforcement/rules/retrospective-review-ftc-rules-guides>.

The program provides an ongoing, systematic approach for obtaining information about the costs and benefits of rules and guides and whether there are changes that could minimize any adverse economic effects, not just a “significant economic impact upon a substantial number of small entities.”<sup>23</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*

During Fall 2023, the Commission plans to issue an updated ten-year review schedule. The Commission has initiated or announced plans to initiate periodic reviews of the following rules and guides:

*Alternative Fuels Rule, 16 CFR part 309.* On October 26, 2023, as part of the systematic review of all Commission rules, the Commission initiated a periodic review of the Alternative Fuels Rule (formally “Labeling Requirements for Alternative Fuels and Alternative-Fueled Vehicles”) by publishing a notice seeking public comments on the effectiveness and impact of the Rule. 88 FR 73549 (Oct. 26, 2023). The public comment period will close on December 26, 2023.

*Cooling-Off Rule, 16 CFR part 429.* By the end of 2023, as part of the systematic review of all Commission rules, the Commission plans to initiate a periodic review of the Cooling-Off Rule (formally “Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations”) by publishing a notice seeking public comments on the effectiveness and impact of the Rule.

Most recently, on January 9, 2015, the Commission amended the Cooling-Off Rule by increasing the exclusionary limit for all door-to-door sales at locations other than a buyer's residence from \$25 up to \$130.<sup>24</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.

*Rules.* During 2024, the Commission plans to initiate periodic review of Rules and Regulations under the Wool Products Labeling Act of 1939, 16 CFR part 300, Rules and Regulations under Fur Products Labeling Act, 16 CFR part 301, Rules and Regulations under the Textile Fiber Products Identification Act, 16 CFR part 303, the Mail, internet, or Telephone Order Merchandise Rule, 16 CFR part 435, and Retail Food Store Advertising and Marketing Practices (Unavailability Rule), 16 CFR part 424.

<sup>22</sup> Exec. Order No. 12866, 58 FR 51735 (Sept. 30, 1993).

<sup>23</sup> 5 U.S.C. 610(a).

<sup>24</sup> 80 FR 1329 (Jan. 9, 2015).

<sup>21</sup> 88 FR 42178 (June 29, 2023).

*Guides.* During 2024, the Commission plans to initiate periodic review of the Guides for the Rebuilt, Reconditioned, and Other Used Automobile Parts Industry, 16 CFR part 20, and the Guides for Advertising Allowances and Other Merchandising Payments and Services (Fred Meyer Guides), 16 CFR part 240.

## (2) Ongoing Periodic Reviews of Rules and Guides

The following proceedings for the retrospective review of Commission rules and guides described in the 2022 Regulatory Plan are ongoing:

*Hart-Scott-Rodino Antitrust Improvements Act Coverage, Exemption, and Transmittal Rules, 16 CFR parts 801–803.* On December 1, 2020, the Commission initiated the periodic review of the Hart-Scott-Rodino Antitrust Improvements Act's Coverage, Exemption, and Transmittal Rules (HSR Rules) as part of the Commission's systematic review of all current Commission rules and guides.<sup>25</sup> The comment period closed on February 1, 2021. The HSR Rules and the Antitrust Improvements Act Notification and Report Form (HSR Form) was adopted pursuant to section 7A of the Clayton Act, which requires firms of a certain size contemplating mergers, acquisitions, or other transactions of a specified size to file notification with the FTC and the DOJ and to wait a designated period of time before consummating the transaction. On June 29, 2023, the Commission issued a notice of proposed rulemaking on substantive HSR Form changes, including implementing congressionally mandated reporting requirements on foreign subsidies.<sup>26</sup> The extended public comment period closed on September 27, 2023.<sup>27</sup> Staff is reviewing the public comments. By February 2024, staff anticipates that the Commission will issue a final rule to transition the HSR Form and Instructions to the new cloud-based e-filing system.

*Business Opportunity Rule, 16 CFR part 437.* On November 25, 2022, the Commission initiated a periodic review of the Business Opportunity Rule.<sup>28</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 comment period

as extended closed on January 31, 2023. Staff is currently reviewing the public comments. Effective in 2012, the Rule requires business-opportunity sellers to furnish prospective purchasers with a disclosure document that provides information regarding the seller, the seller's business, and the nature of the proposed business opportunity, as well as additional information to substantiate any claims about actual or potential sales, income, or profits for a prospective business-opportunity purchaser. The seller must also preserve information that forms a reasonable basis for such claims.

*Children's Online Privacy Protection Rule, 16 CFR part 312.* On July 25, 2019, the Commission issued a request for public comment on its Children's Online Privacy Protection Rule ("COPPA Rule").<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.

*Eyeglass Rule, 16 CFR part 456.* As part of the systematic review process, the Commission sought public comments about the Trade Regulation Rule on Ophthalmic Practice Rules (Eyeglass Rule) on September 3, 2015,<sup>31</sup> and the comment period closed on October 26, 2015. Commission staff completed review of the 868 comments received from consumers, eye care professionals, industry members, trade associations, and consumer advocates. The Eyeglass Rule requires that an optometrist or ophthalmologist give the patient, at no extra cost, a copy of the eyeglass prescription immediately after the examination is completed. The Rule also prohibits optometrists and ophthalmologists from conditioning the availability of an eye examination, as defined by the Rule, on a requirement that the patient agree to purchase ophthalmic goods from the optometrist or ophthalmologist. On January 3, 2023, the Commission issued a notice of proposed rulemaking that would require

ophthalmologists and optometrists to provide patients with a copy of their prescription immediately after the completion of a refractive eye exam, get a signed statement from the patient confirming that they have received their prescription, and keep a record of that confirmation for at least three years.<sup>32</sup> The comment period closed on March 6, 2023, and staff is reviewing the comments. The Commission held a public workshop on May 18, 2023, and staff is reviewing the comments.<sup>33</sup>

*Franchise Rule, 16 CFR part 436.* On March 15, 2019, the Commission initiated a periodic review of the Franchise Rule (formally "Disclosure Requirements and Prohibitions Concerning Franchising").<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 review the public comments. The Rule is intended to give prospective purchasers of franchises the material information they need to weigh the risks and benefits of such an investment. The Rule requires franchisors to provide all potential franchisees with a disclosure document containing 23 specific items of information about the offered franchise, its officers, and other franchisees. Required disclosure topics include, for example, the franchise's litigation history; past and current franchisees and their contact information; any exclusive territory that comes with the franchise; assistance the franchisor provides franchisees; and the cost of purchasing and starting up a franchise.

*Health Breach Notification Rule, 16 CFR part 318.* On May 22, 2020, the Commission initiated a periodic review of the Health Breach Notification Rule.<sup>36</sup> The comment period closed on August 20, 2020. On June 9, 2023, the Commission proposed to amend the Rule in seven ways and requested comment on the proposed changes.<sup>37</sup> The comment period closed on August 8, 2023, and staff is reviewing the comments. The Rule requires vendors of personal health records (PHR) and PHR-related entities to provide: (1) notice to consumers whose unsecured personally identifiable health information has been breached; and (2) notice to the

<sup>25</sup> 85 FR 77042 (Dec. 1, 2020).

<sup>26</sup> 88 FR 42178 (June 29, 2023).

<sup>27</sup> 88 FR 54256 (Aug. 10, 2023).

<sup>28</sup> 87 FR 72428 (Nov. 25, 2022).

<sup>29</sup> 84 FR 35842 (July 25, 2019).

<sup>30</sup> 84 FR 56391 (Oct. 22, 2019).

<sup>31</sup> 80 FR 53274 (Sept. 3, 2015).

<sup>32</sup> 88 FR 248 (Jan. 3, 2023).

<sup>33</sup> 88 FR 18266 (Mar. 28, 2023).

<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> 88 FR 37819 (June 9, 2023).



Commission. Under the Rule, vendors must notify both the FTC and affected consumers whose information has been affected by a breach “without unreasonable delay and in no case later than 60 calendar days” after discovery of a data breach. Among other information, the notices must provide consumers with steps they can take to protect themselves from harm.

*Identity Theft Rules, 16 CFR part 681.*

In December 2018, the Commission initiated a periodic review of the Identity Theft Rules, which include the Red Flags Rule and the Card Issuer Rule.<sup>38</sup> FTC staff is reviewing the comments received. The Red Flags Rule requires financial institutions and creditors to develop and implement a written identity theft prevention program (a “Red Flags Program”). By identifying red flags for identity theft in advance, businesses can be better equipped to spot suspicious patterns that may arise and take steps to prevent potential problems from escalating into a costly episode of identity theft. The Card Issuer Rule requires credit and debit card issuers to implement reasonable policies and procedures to assess the validity of a change of address if they receive notification of a change of address for a consumer’s debit or credit card account and, within a short period of time afterwards, also receive a request for an additional or replacement card for the same account.

*Leather Guides, 16 CFR part 24.* On March 6, 2019, the Commission initiated a periodic review of the Leather Guides, formally known as the Guides for Select Leather and Imitation Leather Products.<sup>39</sup> The comment period closed on April 22, 2019. The Leather Guides apply to the manufacture, sale, distribution, marketing, or advertising of leather or simulated leather purses, luggage, wallets, footwear, and other similar products. The Guides address misrepresentations regarding the composition and characteristics of specific leather and imitation leather products.

*Negative Option Rule, 16 CFR part 310.* On October 2, 2019, the Commission issued an advance notice of proposed rulemaking seeking public comment on the effectiveness and impact of the Trade Regulation Rule on Use of Prenotification Negative Option Plans (Negative Option Rule).<sup>40</sup> On April 24, 2023, the Commission published a notice of proposed rulemaking to amend the existing Rule

to implement new requirements to provide important information to consumers, obtain consumers’ express informed consent, and ensure consumers can easily cancel these programs when they choose.<sup>41</sup> The comment period closed on June 23, 2023. Staff is currently reviewing the public comments.

*b. Proposed Rules*

Since the publication of the 2022 Regulatory Plan, the Commission has initiated or plans to take further steps as described below in the following rulemaking proceedings:

*Energy Labeling Rule, 16 CFR part 305.* The Energy Labeling Rule requires energy labeling for major home appliances and other consumer products to help consumers compare the energy usage and costs of competing models. On October 25, 2022, the Commission issued an advance notice of proposed rulemaking that sought public comment on potential amendments to the Rule, including energy labels for several new consumer product categories, other possible amendments to improve the Rule’s effectiveness, and reducing unnecessary burdens.<sup>42</sup> The comment period as extended closed on January 31, 2023.<sup>43</sup> Staff is currently reviewing the public comments.

*Power Output Claims for Amplifiers Utilized in Home Entertainment Products, 16 CFR part 432.* On December 18, 2020, the Commission initiated a periodic review of the Amplifier Rule (formally “Power Output Claims for Amplifiers Utilized in Home Entertainment Products Rule”).<sup>44</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 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>45</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. On August 21, 2023, the Commission issued a supplemental notice of proposed rulemaking.<sup>46</sup> The comment period closed on October 23, 2023.

*Telemarketing Sales Rule, 16 CFR part 310.* On August 11, 2014, the Commission initiated a periodic review of the Telemarketing Sales Rule (TSR).<sup>47</sup> The comment period as extended closed on November 13, 2014.<sup>48</sup> On June 3, 2022, the Commission issued a notice of proposed rulemaking seeking public comment on proposed amendments to the TSR.<sup>49</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>50</sup> The comment period closed on August 2, 2022. Staff is reviewing the comments.

*Non-Compete Clause Rule, proposed to be codified at 16 CFR part 901.* On January 19, 2023, the Commission proposed the Non-Compete Clause Rule.<sup>51</sup> The proposed rule would, among other things, provide that it is an unfair method of competition for an employer to enter into or attempt to enter into a non-compete clause with a worker; to maintain with a worker a non-compete clause; or, under certain circumstances, to represent to a worker that the worker is subject to a non-compete clause. On February 16, 2023, the Commission hosted a public forum that examined the FTC’s proposed rule and provided an opportunity for interested parties to directly share their experiences with non-compete clauses.

<sup>46</sup> 88 FR 56780 (Aug. 21, 2023).

<sup>47</sup> 79 FR 46732 (Aug. 11, 2014).

<sup>48</sup> 79 FR 61267 (Oct. 10, 2014).

<sup>49</sup> 87 FR 33677 (June 3, 2022).

<sup>50</sup> 87 FR 33662 (June 3, 2022).

<sup>51</sup> 88 FR 3482 (Jan. 19, 2023).

<sup>38</sup> 83 FR 63604 (Dec. 11, 2018).

<sup>39</sup> 84 FR 8045 (Mar. 6, 2019).

<sup>40</sup> 84 FR 52393 (Oct. 2, 2019).

<sup>41</sup> 88 FR 24716 (Apr. 24, 2023).

<sup>42</sup> 87 FR 64399 (Oct. 25, 2022).

<sup>43</sup> 88 FR 4796 (Jan. 25, 2023).

<sup>44</sup> 85 FR 82391 (Dec. 18, 2020).

<sup>45</sup> 87 FR 45047 (July 27, 2022).

The comment period as extended closed on April 19, 2023. Staff is reviewing the comments.

*Motor Vehicle Dealers Trade Regulation Rule, proposed to be codified at 16 CFR part 463.* On July 13, 2022, the Commission issued a notice of proposed rulemaking soliciting public comment on a proposed Rule regarding unfair or deceptive acts or practices under its authority with respect to motor vehicle dealers described in section 1029(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.<sup>52</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. Staff is reviewing the public comments.

*Trade Regulation Rule on Impersonation of Government and Businesses, proposed to be codified at 16 CFR part 461.* On October 17, 2022, the Commission issued a notice of proposed rulemaking to address certain deceptive or unfair acts or practices of impersonation of government and business officials.<sup>53</sup> The public comment period closed on December 16, 2022. An informal hearing was held on May 4, 2023, at which oral testimony<sup>54</sup> was provided and additional written testimony was accepted. Staff is reviewing the comments.

*Earnings Claims Trade Regulation Rule, proposed to be codified at 16 CFR part 462.* On March 11, 2022, the Commission issued an advance notice of proposed rulemaking seeking public comment about a potential rule to address deceptive or unfair marketing using earnings claims.<sup>55</sup> The comment period closed on May 10, 2022. Staff is reviewing the comments.

*Trade Regulation Rule on Commercial Surveillance, 16 CFR part undetermined.* On August 22, 2022, the Commission issued an advance notice of

proposed rulemaking under section 18 of the FTC Act to limit privacy abuses, curb lax security practices, and ensure that algorithmic decision-making does not result in unlawful discrimination.<sup>56</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>57</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>58</sup> The comment period as extended closed on June 15, 2020.<sup>59</sup> 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>60</sup> The comment period closed on January 3, 2023. The Commission also issued a staff report that summarizes the results of staff's review of almost 200 funeral provider websites.<sup>61</sup> The Commission held a public workshop on September 7, 2023.<sup>62</sup> The workshop explored issues relating to the Funeral Rule's General Price List requirements, including whether and how funeral providers should be required to provide price lists electronically or online, and other issues raised in the comments received in response to the 2022 ANPR. The comment period for any written comments related to the issues discussed at the workshop closed on

October 10, 2023. Staff is reviewing the public comments.

*Unfair or Deceptive Fees Trade Regulation Rule, proposed to be codified at 16 CFR part 464.* On November 8, 2022, the Commission issued an advance notice of proposed rulemaking to address certain deceptive or unfair acts or practices related to fees.<sup>63</sup> The public comment period closed on January 9, 2023. On October 11, 2023, the Commission announced that it was publishing a notice of proposed rulemaking to promulgate a trade regulation rule entitled "Rule on Unfair or Deceptive Fees," which would prohibit unfair or deceptive practices relating to fees for goods or services, specifically, misrepresenting the total costs of goods and services by omitting mandatory fees from advertised prices and misrepresenting the nature and purpose of fees. The public comment period will close 60 days after publication in the **Federal Register**.

*Trade Regulation Rule on the Use of Reviews and Endorsements, proposed to be codified at 16 CFR part 465.* On November 8, 2022, the Commission issued an advance notice of proposed rulemaking to address certain deceptive or unfair acts or practices concerning reviews and endorsements.<sup>64</sup> The public comment period closed on January 9, 2023. On July 31, 2023, the Commission issued a notice of proposed rulemaking seeking public comments concerning the utility and scope of the proposed trade regulation rule to prohibit the specified unfair or deceptive acts or practices.<sup>65</sup> The comment period closed on September 29, 2023, and staff is reviewing the comments.

### c. Final Actions

Since the publication of the 2022 Regulatory Plan, the Commission has issued the following final agency actions in rulemaking and guide proceedings:

*Endorsement Guides, 16 CFR part 255.* On July 26, 2023, the Commission adopted revised Endorsement Guides to reflect the ways advertisers now reach consumers to promote products and services, including through social media

<sup>63</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>64</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>65</sup> 88 FR 49364 (July 31, 2023).

<sup>56</sup> 87 FR 51273 (Aug. 22, 2022).

<sup>57</sup> 87 FR 63738 (Oct. 20, 2022).

<sup>58</sup> 85 FR 8490 (Feb. 14, 2020).

<sup>59</sup> 85 FR 20453 (Apr. 13, 2020).

<sup>60</sup> 87 FR 66096 (Nov. 2, 2022).

<sup>61</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>.

<sup>62</sup> 88 FR 33011 (May 23, 2023).

<sup>52</sup> 87 FR 42012 (July 13, 2022).

<sup>53</sup> 87 FR 62741 (Oct. 17, 2022).

<sup>54</sup> See Fed. Trade Comm'n, Transcript of Informal Hearing Before the Administrative Law Judge on Government and Business Impersonation Rule (May 4, 2023), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/impersonationruleinformalhearingtranscript.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/impersonationruleinformalhearingtranscript.pdf).

<sup>55</sup> 87 FR 13951 (Mar. 11, 2022).

and reviews.<sup>66</sup> The Guides provide agency guidance to businesses and others to ensure that advertising using reviews or endorsements is truthful. The final revised Guides took the public comments received into consideration and make a number of revisions including: (1) articulating a new principle regarding procuring, suppressing, boosting, organizing, publishing, upvoting, downvoting, or editing consumer reviews so as to distort what consumers think of a product; (2) addressing incentivized reviews, reviews by employees, and fake negative reviews of a competitor; (3) adding a definition of “clear and conspicuous” and saying that a platform’s built-in disclosure tool might not be an adequate disclosure; (4) changing the definition of “endorsements” to clarify the extent to which it includes fake reviews, virtual influencers, and tags in social media; (5) better explaining the potential liability of advertisers, endorsers, and intermediaries; and (6) highlighting that child-directed advertising is of special concern. In many instances the revisions responded to comments by adding to or modifying the hypothetical examples that illustrate the principles of the Guides. For example, within section 255.2 concerning consumer endorsements, staff modified Example 8 to clarify that a particular seller must display reviews about its own customer service but need not display reviews about the customer service of a different seller.

*Safeguards Rule (Standards for Safeguarding Customer Information), 16 CFR part 314.* On December 9, 2021, the Commission issued a supplemental notice of proposed rulemaking that proposes to amend the Safeguards Rule to require financial institutions to report to the Commission any security event where the financial institutions have determined misuse of customer information has occurred or is reasonably likely and that at least 1,000 consumers have been affected or reasonably may be affected.<sup>67</sup> The comment period closed on February 7, 2022. On October 27, 2023, the Commission announced a final rule amendment that requires covered financial institutions to notify the FTC as soon as possible, and no later than 30 days after discovery, of a security breach involving the information of at least 500 consumers. Such an event requires notification if unencrypted customer information has been acquired without the authorization of the individual to

which the information pertains. The notice to the FTC must include certain information about the event, such as the number of consumers affected or potentially affected. The breach notification requirement becomes effective 180 days after publication of the rule in the **Federal Register**.

#### *d. Significant Regulatory Actions*

The Commission has three proposed rules that would be a “significant regulatory action” under the definition in section 3(f) of Executive Order 12866: the proposed Motor Vehicle Dealers Trade Regulation Rule, to be codified at 16 CFR part 463, the proposed Non-Compete Clause Rule to be codified at 16 CFR 910, and the proposed substantive HSR form changes under the Hart-Scott-Rodino Antitrust Improvements Act Coverage, Exemption, and Transmittal Rules, 16 CFR parts 801–803.

The Commission has no proposed rule that would have significant international impacts or any international regulatory cooperation activities that are reasonably anticipated to lead to significant regulations, as defined in Executive Order 13609.

#### **Summary**

The actions under consideration advance the Commission’s mission by informing and protecting consumers while minimizing burdens on honest businesses. The Commission continues to identify and weigh the costs and benefits of proposed regulatory actions and possible alternative actions.

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## **U.S. NUCLEAR REGULATORY COMMISSION**

### **Statement of Regulatory Priorities for Fiscal Year 2024**

#### **I. Introduction**

Under the authority of the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, the U.S. Nuclear Regulatory Commission (NRC) regulates the possession and use of source, byproduct, and special nuclear material. Our regulatory mission is to license and regulate the Nation’s civilian use of byproduct, source, and special nuclear materials to ensure the adequate protection of public health and safety and promote the common defense and security. As part of our mission, we regulate the operation of nuclear power plants and fuel cycle facilities; the safeguarding of nuclear materials from theft and sabotage; the safe transport,

storage, and disposal of radioactive materials and wastes; the decommissioning and safe release for other uses of licensed facilities that are no longer in operation; and the medical, industrial, and research applications of nuclear material. In addition, we license the import and export of radioactive materials.

As part of our regulatory process, we routinely conduct comprehensive regulatory analyses that examine the costs and benefits of contemplated regulations. We have developed internal procedures and programs to ensure that we impose only necessary requirements on our licensees and we review existing regulations to determine whether the requirements imposed are still necessary.

Our regulatory priorities for fiscal year (FY) 2024 reflect our safety and security mission and will enable us to achieve our three strategic goals described in NUREG–1614, Volume 8, “Strategic Plan: Fiscal Years 2022–2026,” issued April 2022 (<https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1614/v8/index.html>): (1) ensure the safe and secure use of radioactive materials, (2) continue to foster a healthy organization, and (3) inspire stakeholder confidence in the NRC.

#### **II. Regulatory Priorities**

This section contains information on some of our most important and significant regulatory actions that we are considering issuing in proposed or final form during FY 2024. This report does not include the NRC’s high-priority rulemakings titled “American Society of Mechanical Engineers 2021–2022 Code Editions” (RIN 3150–AK21; NRC–2018–0289), “American Society of Mechanical Engineers Code Cases and Update Frequency” (RIN 3150–AK23; NRC–2018–0291), “Risk-Informed, Technology-Inclusive Regulatory Framework for Advanced Reactors” (RIN 3150–AK31; NRC–2019–0062), “Advanced Nuclear Reactor Generic Environmental Impact Statement” (RIN 3150–AK55; NRC 2020–0101), and “Reporting Nuclear Medicine Injection Extravasations as Medical Events” (RIN 3150–AK91; NRC–2022–0218) as the timeframe for reporting is only through FY 2024; the agency expects to publish the final rules during FY 2025. The agency’s portion of the Unified Agenda of Regulatory and Deregulatory Actions contains additional information on NRC rulemaking activities and a broader spectrum of our upcoming regulatory actions. We also provide additional information on planned rulemakings and petition for rulemaking activities,

<sup>66</sup> 88 FR 48092 (July 26, 2023).

<sup>67</sup> 86 FR 70062 (Dec. 9, 2021).

including priority and schedule, on our website at <https://www.nrc.gov/about-nrc/regulatory/rulemaking/rules-petitions.html>.

#### A. NRC Priority Rulemakings

##### Proposed Rules

*Integrated Low-Level Radioactive Waste Disposal (RIN 3150-AI92; NRC-2011-0012):* This rulemaking would amend the NRC's regulations in Title 10 of the *Code of Federal Regulations* Part 61, "Licensing Requirements for Land Disposal of Radioactive Waste," to revise the licensing requirements for low-level radioactive waste disposal and address requirements for disposal of greater-than-Class C and transuranic waste.

##### Final Rules

*Alignment of Licensing Processes and Lessons Learned from New Reactor Licensing (RIN 3150-AI66; NRC-2009-0196):* This rulemaking would amend the NRC's regulations for the licensing of new reactors. The rule would align requirements between the two licensing processes provided in the NRC's regulations to ensure that all new reactor applications conform to the NRC's policies and requirements, regardless of the selected licensing approach. The rule would address lessons learned from NRC reviews conducted for combined licenses, design certifications, early site permits, and operating licenses.

*Regulatory Improvements for Production and Utilization Facilities*

*Transitioning to Decommissioning (RIN 3150-AJ59; NRC-2015-0070):* This rulemaking would amend the NRC's regulations to provide an appropriate regulatory framework for nuclear power reactors transitioning from operations to decommissioning.

*Cyber Security for Fuel Facilities (RIN 3150-AJ64; NRC-2015-0179):* This rulemaking would amend the NRC's regulations to require certain fuel cycle facilities to establish, implement, and maintain a cyber security program that is designed to protect public health and safety and the common defense and security.

*Renewing Nuclear Power Plant Operating Licenses—Environmental Review (RIN 3150-AK32; NRC-2018-0296):* This rulemaking would amend the NRC's environmental protection regulations by updating the environmental effect findings of renewing the operating license of a nuclear power plant. These findings would be based on a programmatic analysis under the National Environmental Policy Act. The rule will affect operating power reactor licensees that seek an initial or subsequent renewed operating license.

*Radioactive Source Security and Accountability (RIN 3150-AK83; NRC-2022-0103):* The NRC is amending its regulations to require safety and security equipment to be in place before the agency grants a license for possession and use of radioactive materials. This rule also would require a licensee transferring category 3

quantities of radioactive material to verify that the recipient's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred, and that such verification be conducted through the License Verification System or by contacting the license-issuing authority. Lastly, the NRC would implement a more stringent license verification method for licensees relying upon an oral certification to process an emergency shipment of radioactive material and remove an obsolete verification method for obtaining sources of information. This rulemaking would affect applicants for a radioactive material license and licensees that transfer category 3 quantities of radioactive material.

#### B. Significant Final Rules

The rulemaking activity below meets the requirements of a significant regulatory action in Executive Order 12866, "Regulatory Planning and Review," signed September 30, 1993, because it is likely to have an annual effect on the economy of \$100 million or more.

*Revision of Fee Schedules: Fee Recovery for FY 2024 (RIN 3150-AK74; NRC-2022-0046):* This rule amends the NRC's fee schedules for licensing, inspection, and annual fees charged to agency applicants and licensees.

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