FEDERAL REGISTER

Vol. 90 Thursday,
No. 208 October 30, 2025

Pages 48799–48908

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 274a

[CIS No. 2826–25; DHS Docket No. USCIS–2025–0271]

RIN 1615–AD05

Removal of the Automatic Extension of Employment Authorization Documents

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Interim final rule (''IFR'') with request for comments.

SUMMARY: This IFR amends DHS regulations to end the practice of automatically extending the validity of employment authorization documents (Forms I–766 or EADs) for aliens who have timely filed an application to renew their EAD in certain employment authorization categories. The purpose of this change is to prioritize the proper vetting and screening of aliens before granting a new period of employment authorization and/or a new EAD. This IFR does not impact the validity of EADs that were automatically extended prior to October 30, 2025 or which are otherwise automatically extended by law or **Federal Register** notice.

DATES: This IFR is effective on October 30, 2025. Comments must be received on or before December 1, 2025. The electronic Federal Docket Management System will accept comments prior to midnight Eastern time at the end of that day.

ADDRESSES: You may submit comments on the entirety of this IFR, identified by DHS Docket No. USCIS–2025–0271, through the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Follow the website instructions for submitting comments.

Comments must be submitted in English, or an English translation must be provided. Comments submitted in a manner other than via *http://www.regulations.gov,* including emails or letters sent to DHS or USCIS officials, will not be considered comments on the proposed rule and may not receive a response from DHS. Please note that DHS and USCIS cannot accept any comments that are hand-delivered or couriered. In addition, USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. USCIS is also not accepting mailed comments at this time.

If you cannot submit your comment by using *http://www.regulations.gov,* please contact Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at (240) 721–3000 for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, DHS, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone (240) 721–3000.

SUPPLEMENTARY INFORMATION:

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Table of Abbreviations

APA—Administrative Procedure Act
CBP—U.S. Customs and Border Protection
CFR—Code of Federal Regulations
CRA—Congressional Review Act
DHS—U.S. Department of Homeland Security
EAD—employment authorization document
E.O.—Executive Order
Form I–765—Application for Employment Authorization
FY—Fiscal Year
HSA—Homeland Security Act of 2002
ICE—U.S. Immigration and Customs Enforcement
IFR—Interim final rule
IIRIRA—Illegal Immigration Reform and Immigrant Responsibility Act of 1996
INA—Immigration and Nationality Act
ISO—Immigration Service Officer
NEPA—National Environmental Policy Act
OMB—Office of Management and Budget

PRA—Paperwork Reduction Act
SBREFA—Small Business Regulatory Enforcement Fairness Act of 1996
Secretary—Secretary of Homeland Security
TFR—Temporary final rule
UMRA—Unfunded Mandates Reform Act of 1995
U.S.C.—United States Code
USCIS—U.S. Citizenship and Immigration Services

I. Public Participation

DHS invites all interested parties to participate in this rulemaking by submitting written data, views, comments and arguments on all aspects of this IFR. DHS also invites comments that relate to the economic, environmental, or federalism effects that might result from this IFR. Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to USCIS in implementing these changes will reference a specific portion of the IFR, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. Comments submitted in a manner other than the one listed above, including emails or letters sent to DHS or USCIS officials, will not be considered comments on the IFR and may not receive a response from DHS.

Instructions: If you submit a comment, you must include the agency name (U.S. Citizenship and Immigration Services) and the DHS Docket No. USCIS–USCIS–2025–0271 for this rulemaking. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice available at *http://www.regulations.gov.*

Docket: For access to the docket and to read background documents or comments received, go to *http://www.regulations.gov,* referencing DHS Docket No. USCIS–USCIS–2025–0271. You may also sign up for email alerts on the online docket to be notified when comments are posted or a final rule is published.

II. Executive Summary

A. Purpose of the Regulatory Action

The purpose of this rulemaking is to prioritize the proper vetting and screening of aliens before granting a new period of employment authorization and/or a new EAD by ending the practice of automatically extending the validity of employment authorization and/or EADs for aliens who have timely filed an application to renew their EAD in certain employment authorization categories. DHS will also continue to work to reduce frivolous, fraudulent or otherwise non-meritorious EAD filings to free up adjudicatory and other resources to better ensure national security and program integrity. Ending the practice of providing automatic extensions of EADs is consistent with President Trump's directive in Executive Order (E.O.) 14159 ''Protecting the American People Against Invasion,'' which directs the Secretary of Homeland Security, in coordination with the Secretary of State and the Attorney General, in Section 16 to take all appropriate action to align any departmental activities with the policies set out by the President, and to ensure, among others, ''that employment authorization is provided in a manner consistent with section 274A of the INA (8 U.S.C. 1324a), and that employment authorization is not provided to any unauthorized alien in the United States.'' [1] It is also consistent with E.O. 14161, ''Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats,'' which directs the Secretary of State, in coordination with the Secretary of Homeland Security, the Attorney General, and the Director of National Intelligence in Section 2 to ''identify all resources that may be used to ensure that all aliens seeking admission to the United States, or who are already in the United States, are vetted and screened to the maximum degree possible.'' [2]

B. Legal Authority

The authority for the Secretary of Homeland Security (Secretary) to issue this IFR 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 and establish such regulations as the Secretary deems necessary for carrying out such authority, and section 101(b)(1)(F) of the Homeland Security Act (HSA), 6 U.S.C. 111(b)(1)(F), which establishes as a primary mission of DHS the duty to ''ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.''

C. Summary of the Regulatory Action

This IFR makes the following changes:

- DHS is revising the heading of 8 CFR 274a.13(d), to clearly indicate that the up-to 540-day automatic extension period only applies to renewal EAD applications filed before October 30, 2025. DHS makes no other changes to this paragraph.
- DHS is adding new 8 CFR 274a.13(e). The new provision explains that, unless otherwise provided in 8 CFR 274a.13(d), by law, or through a **Federal Register** notice for Temporary Protected Status (TPS)-related employment documentation, the validity period of an expired or expiring Employment Authorization Document and/or employment authorization will not be automatically extended by a renewal EAD application filed on or after October 30, 2025.

This IFR does not impact automatic extensions of EADs and/or employment authorization provided by law or **Federal Register** notices, such as those for TPS applicants and beneficiaries pursuant to section 244 of the Act, 8 U.S.C. 1254a, and 8 CFR part 244.

III. Background & Purpose

A. Legal Authority

The Secretary of Homeland Security's (Secretary) authority for the regulatory amendments made in this IFR are 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 (codified in part at 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 and establish such regulations as the Secretary deems necessary for carrying out such authority, as well as section 102 of the HSA, 6 U.S.C. 112, which vests all of the functions of DHS in the Secretary and authorizes the Secretary

[1] *See* E.O. 14159, Protecting the American People Against Invasion (Jan. 20, 2025), 90 FR 8443, 8446 (Jan. 29, 2025).

[2] *See* E.O. 14161, Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats (Jan. 20, 2025), 90 FR 8451, 8451 (Jan. 30, 2025).

to issue regulations.[3] Further authority for this rule is found in:

- Section 208(d)(2) of the INA, 8 U.S.C. 1158(d)(2), which provides the Secretary with authority to grant employment authorization, in her discretion, to applicants for asylum if 180 days have passed since filing an application for asylum;
- Section 214 of the INA, 8 U.S.C. 1184, including section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), which authorizes the Secretary to prescribe, by regulation, the time and conditions of the admission of nonimmigrants;
- Section 244(a)(1)(B) of the INA, 8 U.S.C. 1254a(a)(1)(B), which states that the Secretary shall authorize employment and provide evidence of employment authorization for aliens who have been granted Temporary Protected Status;
- Section 274A(b) of the INA, 8 U.S.C. 1324a(b), which provides for the employment verification system and outlines employment eligibility verification requirements;
- Section 274A(h)(3)(B) of the INA, 8 U.S.C. 1324a(h)(3)(B), recognizes the Secretary's authority to extend employment authorization to aliens in the United States; [4] and
- Sections 100003(c) and 100012(a) of the One Big Beautiful Bill Act, Public Law 119–21 (July 4, 2025), which limit the validity period of any employment authorization for aliens granted Temporary Protected Status (TPS) under section 244 of the INA, 8 U.S.C. 1254a, to a period of one year or for the duration of the designation of TPS, whichever is shorter.

B. Legal Framework for Employment Authorization and Verification

1. Types of Employment Authorization: 8 CFR 274a.12(a), (b), and (c)

Whether an alien is authorized to work in the United States depends on the alien's immigration status or other conditions that may permit employment authorization (for example, having a pending application for asylum or a grant of deferred action). DHS regulations outline three classes of aliens who may be eligible for employment in the United States, as follows: [5]

- Aliens in the first class, described at 8 CFR 274a.12(a), are authorized to work ''incident to status'' for any employer, as well as to engage in self-employment, as a condition of their immigration status or circumstances. This means that for certain eligible aliens, employment authorization is granted with the underlying immigration status (called ''incident to status'' employment authorization). Although authorized to work as a condition of their status or circumstances, certain classes of aliens must apply to USCIS, which they do by filing a Form I–765 Application for Employment Authorization, in order to receive a Form I–766 EAD as evidence of that employment authorization.[6]
- Aliens in the second class, described at 8 CFR 274a.12(b), also are authorized to work ''incident to status'' as a condition of their immigration status or circumstances, but generally the authorization is valid only with a specific employer.[7] These aliens are issued an Arrival-Departure Record (Form I–94) indicating their employment-authorized status in the United States and in most cases do not file separate requests for evidence of employment authorization.
- Aliens in the third class, described at 8 CFR 274a.12(c), are required to apply for employment authorization, which they do by filing a Form I–765 Application for Employment Authorization, and may work only if USCIS, in its discretion, approves their application and issues a Form I–766 EAD. They are authorized to work for any employer or engage in self-employment with a valid EAD, subject to certain restrictions.[8]

2. The Application Process for Obtaining an Employment Authorization Document

For certain eligibility categories listed in 8 CFR 274a.12(a) (the first class) and all eligibility categories listed in 8 CFR 274a.12(c) (the third class), as well as additional categories specified in the Form I–765 instructions,[9] an EAD application must be properly filed with USCIS (with fee or fee waiver, as applicable) before an alien can receive an EAD and/or employment authorization.[10] If an EAD application is approved under 8 CFR 274a.12(a), the resultant EAD provides the alien with proof of identity and employment authorization incident to status or circumstance. Certain aliens may file EAD applications concurrently with related benefit requests if permitted by the applicable form instructions or as announced by USCIS.[11] In such instances, the underlying benefit requests, if granted, would form the basis for an EAD or eligibility to apply for employment authorization. For eligibility categories listed in 8 CFR 274a.12(a) and (c), USCIS has the discretion to establish a specific validity period for the EAD.[12]

After an alien's filing of an EAD application, USCIS typically issues a

[3] Although several provisions of the INA discussed in this final rule refer exclusively to the ''Attorney General,'' such provisions are now to be read as referring to the Secretary of Homeland Security by operation of the HSA. *See* 6 U.S.C. 202(3), 251, 271(b), 542 note, 557; 8 U.S.C. 1103(a)(1) and (g), 1551 note; *Nielsen* v. *Preap,* 586 U.S. 392, 397 n.2 (2019).

[4] Courts have acknowledged that Congress delegated authority to DHS to grant or extend employment authorization to certain classes of aliens. *See, e.g., Wash. All. of Tech. Workers* v. *DHS,* 50 F.4th 164, 191–192 (D.C. Cir. 2022) (''What matters is that section 1324a(h)(3) expressly acknowledges that employment authorization need not be specifically conferred by statute; it can also be granted by regulation.''). DHS is exercising this discretionary authority consistent with all applicable authorities, including the referenced authorities in the HSA, and sections 103, 208, 214, 244, and 274A(h)(3) of the INA, 8 U.S.C. 1103, 1158, 1184, 1254a, and 1324a(h)(3), as well as the Administrative Procedure Act at 5 U.S.C. 553. *See Loper Bright Enterprises* v. *Raimondo,* 144 S. Ct. 2244, 2263 (2024) (''In a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion. Congress has often enacted such statutes. For example, some statutes 'expressly delegate' to an agency the authority to give meaning to a particular statutory term. Others empower an agency to prescribe rules to 'fill up the details' of a statutory scheme, or to regulate subject to the limits imposed by a term or phrase that leaves agencies with flexibility,' such as 'appropriate' or 'reasonable.' '') (internal citations omitted). Litigation challenging DHS's authority to provide employment authorization to certain H–4 nonimmigrants is currently pending before the Supreme Court. *Save Jobs USA* v. *DHS,* No. 24–923 (docketed Feb. 26, 2025).

[5] There are several employment-eligible categories that are not included in DHS regulations but instead are described in the form instructions to Form I–765, Application for Employment Authorization (EAD application). Employment-authorized L nonimmigrant spouses are an example. *See* INA sec. 214(c)(2)(E), 8 U.S.C. 1184(c)(2)(E).

[6] *See* 8 CFR 274a.12(a).

[7] *See* 8 CFR 274a.12(b).

[8] *See* 8 CFR 274a.12(c); *Matter of Tong,* 16 I&N Dec. 593, 595 (BIA 1978) (holding that the term '' 'employment' is a common one, generally used with relation to the most common pursuits,'' and includes ''the act of being employed for one's self'').

[9] *See* DHS, USCIS, Form I–765, ''Instructions for Application for Employment Authorization,'' *https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf* (last visited June 16, 2025). In reviewing the EAD application, USCIS ensures that the fee was paid, a fee waiver was granted, or a fee exemption applies.

[10] *See* 8 CFR 103.2(a) and 8 CFR 274a.13(a). Some aliens who are employment authorized incident to status (*e.g.,* asylees, refugees, TPS beneficiaries) may file an EAD application to obtain an EAD. Aliens who are filing within an eligibility category listed in 8 CFR 274a.12(c) must, by contrast, use the EAD application form to request both employment authorization and an EAD.

[11] *See* 8 CFR 274a.13(a). For example, the spouse of an H–1B worker may file an EAD application at the same time as his or her Form I–539, Application to Extend/Change Nonimmigrant Status. *See* DHS, USCIS, *Employment Authorization for Certain H–4, E Dependent Spouses* (last visited June 16, 2025), *https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-1b-specialty-occupations-and-fashion-models/employment-authorization-for-certain-h-4-dependent-spouses* (last visited June 16, 2025).

[12] *See* 8 CFR 274a.12(a) and (c).

Form I–797C, Notice of Action (''Form I–797C'' or ''receipt notice'') to confirm receipt. EAD applications received by USCIS initially go through an intake process. The technical mechanics of the intake process vary based on the requested employment authorization category and whether the EAD application was filed electronically or by mail. Regardless of the applicable category or method of filing, the EAD application intake process generally consists of the following steps: data is entered into a USCIS case-management system based on the information provided by the applicant, the required fee is collected or waived, and the applicant's signature is verified.

Once these steps are complete, USCIS begins the pre-processing stage of the adjudication. Pre-processing may include A-number verification, scheduling of a biometrics appointment or biometric reuse, and resolution of discrepancies related to the applicant's identity or address. This stage also includes initial security checks based on biographic information provided by the applicant. If the initial security checks reveal any national security or public safety threat through ''hits'' in the database system, these hits must be promptly reviewed by an officer who will have to resolve and address these hits. The resolution of some hits can be time consuming and may involve collaboration with law enforcement agencies.

Once pre-processing is complete, the case moves into a queue to await adjudication, where cases are assigned for adjudication generally based on a first-in-first-out processing order. At adjudication, immigration service officers (ISO) review the applicant's evidence of eligibility. If the ISO determines that the applicant is eligible, additional security checks may be conducted. Upon final review of the results of security checks and resolution of any issues that are identified during the security check and review process, and if the applicant continues to be eligible and merits a favorable exercise of discretion, as applicable, the application may be approved.

If eligibility is not established, or if the applicant does not appear to merit a favorable exercise of discretion, when applicable, USCIS may issue a request for evidence or notice of intent to deny in order to provide the applicant with the opportunity to address any deficiencies in the record or rebut a presumption of ineligibility. Upon receiving the response, USCIS reviews the submission and issues a final decision on the application. Prior to issuing the final decision, USCIS may update or conduct additional security checks.

3. Renewal of Employment Authorization Documents

Temporary employment authorization and EADs generally are not valid indefinitely but instead expire after a specified period of time.[13] Generally, aliens within the eligibility categories listed in 8 CFR 274a.12(c) must obtain a renewal of employment authorization and their EADs before the expiration date stated on their current EADs, or they will lose their eligibility to work in the United States (unless, since obtaining their current EADs, the aliens have obtained an immigration status or belong to a class of aliens with employment authorization incident to that status or class, or obtain employment authorization based on another category).[14] The same holds true for some classes of aliens authorized to work incident to status whose EAD expiration dates coincide with the termination or expiration of their underlying immigration status. Other aliens authorized to work incident to status, such as asylees, refugees, and TPS beneficiaries, may have immigration status that confers employment authorization that continues past the expiration date stated on their EADs. Nevertheless, such aliens may wish to renew their EAD to have acceptable evidence of their continuous employment authorization for various purposes, such as presenting evidence of employment authorization and identity to their employers for completion of Form I–9, Employment Eligibility Verification. Failure to renew their EADs prior to the expiration date may result in job loss if such aliens do not have or cannot present unexpired alternate acceptable evidence of employment authorization to show their employers.[15]

Those seeking to renew previously granted employment authorization and/or obtain new EADs must file renewal EAD applications with USCIS in accordance with the form instructions.[16] USCIS generally recommends filing a renewal EAD application up to 180 days before the current EAD expires.[17]

4. I–9 Employment Eligibility Verification

The Immigration Reform and Control Act (IRCA) requires employers to verify the identity and employment eligibility of their employees and sets forth criminal and civil sanctions for employment-related violations. *See* Public Law 99–603, 100 Stat. 3445 (1986). Section 274A(b) of the INA, 8 U.S.C. 1324a(b), requires employers to verify the identity and employment eligibility of all individuals, including aliens, hired in the United States. The Employment Eligibility Verification form (Form I–9) is used by employers to document this verification. For all current employees and certain former employees, employers are required to maintain for inspection original Forms I–9 on paper or as an electronic version generated by an electronic system that can produce legible and readable paper copies, among other requirements.[18]

Under 8 CFR 274a.2(b)(1)(vii), if an employee's EAD and/or employment

[13] *See* 8 CFR 274a.13(b). *But see* 8 CFR 274a.14 (setting forth the basis for termination or revocation of employment authorization); *see also* secs. 100003(b), (c), 100010(a) and 1000012(a) of the *One Big Beautiful Bill Act,* Public Law 119–21 (July 4, 2025) (limiting any employment authorization for aliens paroled into the United States or granted TPS to a duration of one year or for the duration of the parole/TPS, whichever is shorter).

[14] *See* 8 CFR 274a.14(a)(1)(i).

[15] The employee must present the employer with acceptable and unexpired documents evidencing identity and employment authorization. The lists of acceptable documents can be found on Form I–9. *See* DHS, USCIS, Form I–9, *Employment Eligibility Verification, https://www.uscis.gov/sites/default/files/document/forms/i-9.pdf* (last visited June 16, 2025) and 8 CFR 274a.2(b)(1)(v). An example of alternate evidence for an asylee is Form I–94, Arrival/Departure Record, with the appropriate stamp or notation paired with an acceptable identity document, such as a state-issued driver's license or identity card. *See* DHS, USCIS, *M–274, Handbook for Employers, 7.3 Refugees and Asylees, https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/70-evidence-of-employment-authorization-for-certain-categories/73-refugees-and-asylees* (last visited June 16, 2025). An employer that does not properly complete Form I–9, which includes reverifying continued employment authorization, or continues to employ an individual with knowledge that the individual is not authorized to work, may be subject to civil money penalties. *See* DHS, USCIS, *M–274, Handbook for Employers, 11.8 Penalties for Prohibited Practices, https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/110-unlawful-discrimination-and-penalties-for-prohibited-practices/118-penalties-for-prohibited-practices* (last visited June 16, 2025). In addition, an employer who engages in a ''pattern or practice'' of employing unauthorized aliens may face criminal penalties under 8 U.S.C. 1324a(f). U.S. Immigration and Customs Enforcement has primary enforcement responsibilities for enforcement of the civil monetary penalties under INA sec. 274A, 8 U.S.C. 1324a.

[16] *See* 8 CFR 103.2, 106.2, and 274a.13(a); *see* DHS, USCIS, *Form I–765, Instructions for Application for Employment Authorization, https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf* (last visited June 16, 2025). In reviewing the EAD application, USCIS ensures that the fee was paid, a fee waiver was granted, or a fee exemption applies.

[17] *See* DHS, USCIS, ''I–765, Application for Employment Authorization,'' *https://www.uscis.gov/i-765* (last visited June 16, 2025); DHS, USCIS, *Employment Authorization Document* (last visited June 16, 2025), *https://www.uscis.gov/green-card/green-card-processes-and-procedures/employment-authorization-document* (last visited June 16, 2025*); see also* 81 FR 82398, 82456.

[18] *See* 8 CFR 274a.2(e)–(i).

authorization expires, his or her employer must reverify or update the employee's Form I–9 to reflect that the employee is still authorized to work in the United States; otherwise, the alien's continued employment may be in violation of the law. No later than the date employment authorization expires, employees must present unexpired acceptable documentation that demonstrates continued authorization to work.[19] The employer is required to reverify or update information on the employee's Form I–9 to record the employee's evidence of continued employment authorization. Employers who fail to properly complete Forms I–9, including reverification, are subject to civil money penalties for paperwork violations.[20] Employers must terminate employment of employees who have gaps in their employment authorization documentation and are not able to reverify or risk being fined under the employer sanctions provisions in section 274A of the INA, 8 U.S.C. 1324a.

If an alien engages in unauthorized employment, such activity may render the alien removable,[21] render the alien ineligible for future benefits such as adjustment of status,[22] and/or subject the employer to civil and/or criminal penalties.[23]

C. Automatic Extension of Employment Authorization and Documentation

Before November 2016, 8 CFR 274a.13(d) stated that USCIS would adjudicate an EAD application within 90 days of receipt. If USCIS did not adjudicate the EAD application within that timeframe, the alien was eligible to request an interim EAD with a validity period not to exceed 240 days.[24]

On November 18, 2016, as part of DHS's efforts to implement the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), DHS published a final rule that eliminated Interim EADs and replaced them with a maximum 180-day automatic extension period for certain renewal applicants.[25] DHS subsequently issued a final rule in December 2024 that increased the automatic extension period from up to 180 days to up to 540 days for certain applications pending on May 4, 2022, or properly filed on or after May 4, 2022.[26]

Under the current regulation, the automatic extension period automatically extends the validity period of certain categories of EADs for up to 540 days if the alien timely files a renewal application (and USCIS is still processing the application after the expiration date of the current EAD). The issuance of the receipt notice (Form I–797C) indicating timely filing of the EAD renewal application, and the same employment eligibility category as stated on the facially expired EAD is the mechanism that serves to automatically extend the EAD.[27] However, at the time of the issuance of the receipt notice, vetting and screening checks have not been completed, potential hits of derogatory information have not been resolved, a determination of continued eligibility has not been made, and when applicable, USCIS has not determined that the employment authorization should continue to be granted in the exercise of discretion. Once USCIS adjudicates the renewal EAD application, the automatic extension period ends.

To receive an automatic extension under the current regulation, an eligible renewal applicant must meet the following conditions:

- The alien timely files an application to renew the EAD and/or employment authorization before the EAD expires; [28]
- The renewal EAD application is based on the same employment authorization category shown on the front of the expiring EAD or, for an alien approved for TPS, whose EAD was issued pursuant to either 8 CFR 274a.12(a)(12) or (c)(19); [29] and
- The alien's eligibility to apply for employment authorization continues notwithstanding the expiration of the EAD and is based on an employment authorization category that does not require the adjudication of an underlying application or petition before the adjudication of the renewal application, as may be announced on the USCIS website.[30]

The following classes of aliens filing to renew an EAD may be eligible to receive an automatic extension of their employment authorization and/or EAD for up to 540 days under the current regulation: [31]

- Aliens admitted as refugees (A03); [32]
- Aliens granted asylum (A05); [33]
- Aliens admitted as parents or dependent children of aliens granted permanent residence under section 101(a)(27)(I) of the INA, 8 U.S.C. 1101(a)(27)(I) (A07); [34]
- Aliens admitted to the United States as citizens of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau pursuant to agreements between the United States and the former trust territories (A08); [35]
- Aliens granted withholding of deportation or removal (A10); [36]
- Aliens granted TPS, if the employment authorization category on their current EAD is either A12 or C19 (A12); [37]
- Alien spouses of E–1/2/3 nonimmigrants (Treaty Trader/Investor/Australian Specialty Worker) (A17); [38]
- Alien spouses of L–1 nonimmigrants (Intracompany Transferees) (A18); [39]
- Aliens who have filed applications for asylum and withholding of deportation or removal (C08); [40]
- Aliens who have filed applications for adjustment of status to lawful permanent resident under section 245 of the INA, 8 U.S.C. 1255 (C09); [41]

[19] *See* DHS, USCIS, *M–274, Handbook for Employers, 6.1, Reverifying Employment Authorization for Current Employees, https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/60-completing-supplement-b-reverification-and-rehire-of-form-i-9/61-reverifying-employment-authorization-for-current-employees* (last visited June 16, 2025).

[20] *See* INA sec. 274A(e)(5), 8 U.S.C. 1324a(e)(5).

[21] *See, e.g.,* INA sec. 237(a)(1)(C), 8 U.S.C. 1227(a)(1)(C); 8 CFR 214.1(e).

[22] *See* INA sec. 245(c), (k); 8 U.S.C. 1255(c), (k).

[23] *See* INA sec. 274A, 8 U.S.C. 1324a.

[24] *See* 8 CFR 274a.13(d) (2016).

[25] *See* 81 FR 82398 (Nov. 18, 2016) (AC21 Final Rule).

[26] *See* 89 FR 101208 (Dec. 13, 2024) (permanently increased the automatic extension period to up to 540 days). In addition, DHS previously issued temporary final rules on this same topic in May 2022 and April 2024, discussed further below in Section III.D of this preamble.

[27] For EADs and I–797C notices that contain either an A12 or C19 category code, the category codes need not match.

[28] 8 CFR 274a.13(d)(1)(i). TPS beneficiaries must file during the re-registration period in the applicable **Federal Register** notice; *see* 81 FR 82398, 82455 (Nov. 18, 2016).

[29] *See* 8 CFR 274a.13(d)(1)(ii) (exempting aliens approved for TPS with EADs issued pursuant to 8 CFR 274a.12(c)(19) from the requirement that the employment authorization category on the face of the expiring EAD be the same as on the renewal EAD application).

[30] *See* 8 CFR 274a.13(d)(1)(iii).

[31] *See* DHS, USCIS, *Automatic Employment Authorization (EAD) Extension* (last visited June 16, 2025), *https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/automatic-employment-authorization-document-ead-extension* (last visited June 16, 2025).

[32] *See* 8 CFR 274a.12(a)(3).

[33] *See* 8 CFR 274a.12(a)(5).

[34] *See* 8 CFR 274a.12(a)(7).

[35] *See* 8 CFR 274a.12(a)(8).

[36] *See* 8 CFR 274a.12(a)(10).

[37] *See* 8 CFR 274a.12(a)(12) or (c)(19).

[38] *See* INA sec. 214(e)(2), 8 U.S.C. 1184(e)(2).

[39] *See* INA sec. 214(c)(2)(E), 8 U.S.C. 1184(c)(2)(E).

[40] *See* 8 CFR 274a.12(c)(8).

[41] *See* 8 CFR 274a.12(c)(9). In certain adjustment of status cases, if the applicant seeks an EAD and advance parole (by filing Form I–131, Application for Travel Document), USCIS may issue an employment authorization card combined with an Advance Parole Card (Form I–512). This is also referred to as a ''combo card.'' If the EAD card is combined with the advance parole authorization (the EAD card has an annotation ''SERVES AS I–

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- Aliens who have filed applications for suspension of deportation under section 244 of the INA (as it existed prior to April 1, 1997), cancellation of removal pursuant to section 240A of the INA, or special rule cancellation of removal under section 309(f)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (C10); [42]
- Aliens who have filed applications for creation of record of lawful admission for permanent residence (C16); [43]
- Aliens who have filed applications for TPS and who have been deemed *prima facie* eligible for TPS under 8 CFR 244.10(a) and have received an EAD as a ''temporary treatment benefit'' under 8 CFR 244.10(e) and 274a.12(c)(19) (C19); [44]
- Aliens who have filed legalization applications pursuant to section 210 of the INA, 8 U.S.C. 1160 (C20); [45]
- Aliens who have filed legalization applications pursuant to section 245A of the INA, 8 U.S.C. 1255a (C22); [46]
- Aliens who have filed applications for adjustment of status pursuant to section 1104 of the Legal Immigration Family Equity Act (C24); [47]
- Certain alien spouses (H–4) of H–1B nonimmigrants with an unexpired Form I–94 showing H–4 nonimmigrant status (C26); [48] and
- Aliens who are the principal beneficiaries or derivative children of approved Violence Against Women Act (VAWA) self-petitioners,[49] under the employment authorization category ''(c)(31)'' in the form instructions to the EAD application (C31).[50]

The extension automatically terminates up to 540 days after the expiration date on the face of the EAD, or upon issuance of notification of a decision denying the renewal request, whichever date is earlier.[51] An EAD that is expired on its face is considered unexpired when combined with a Form I–797C receipt notice indicating a timely filing of the application to renew the EAD when the automatic extension requirements are met.[52]

Therefore, when the ''card expires'' date on the front of the EAD is reached, an eligible alien who is continuing his or her U.S. employment may present to his or her employer the Form I–797C receipt notice for the renewal EAD application to show that the validity of the EAD has been automatically extended as evidence of continued employment authorization, and the employer must update the previously completed Form I–9, Employment Eligibility Verification, to reflect the extended EAD expiration date based on the automatic extension while the renewal is pending.

For new employment, the automatic extension date is recorded on the Form I–9 by the employee and the employer in the first instance. In either case, reverification of employment authorization and/or the EAD must occur when the automatic extension period terminates.[53]

If the renewal application is granted, the new employment authorization and/or EAD generally is valid as of the date of approval of the application. If the application is denied, the automatically extended employment authorization and/or EAD generally is terminated on the day of the denial.[54] If the renewal application was timely and properly filed, but remains pending beyond the maximum 540-day automatic extension period, the applicant must stop working upon the expiration of the automatically extended validity period, and the employer must remove the employee from the payroll if the applicant/employee cannot provide other acceptable evidence of current employment authorization.[55]

D. Increasing the Automatic Extension Period From a Maximum of 180 Days to a Maximum of 540 Days

USCIS' ability to process both initial and renewal EAD applications within USCIS' targeted processing times was adversely impacted by a variety of circumstances since the promulgation of the up to 180-day automatic extension period for certain renewal EAD applicants.[56] To reduce the number of renewal EAD applicants eligible for an automatic extension of their EAD validity under 8 CFR 274a.13(d) from experiencing lapses in their EAD validity and/or employment authorization because of USCIS processing delays, DHS issued temporary final rules in May 2022 [57] and April 2024 [58] that temporarily increased the automatic extension from up to 180 days to up to 540 days. DHS also issued a final rule in December 2024 [59] that codified the up to 540-day automatic extension for certain applications pending on May 4, 2022, or properly filed on or after May 4, 2022. These three regulatory actions are discussed in more detail in the following sections.

1. Circumstances Resulting in the 2022 Temporary Final Rule

In 2022, processing times for renewal EAD applications had significantly increased due to fiscal and operational challenges that were exacerbated by the emergency measures USCIS employed in response to the COVID–19 pandemic and a sudden increase in EAD application filings.[60]

USCIS is a fee-based agency that relies on predictable fee revenue and its carryover from the previous year. USCIS began experiencing fiscal troubles in early December 2019, due in part to the fact that USCIS had not been able to update its fee structure since the 2016

512 ADVANCE PAROLE''), any automatic extension does not apply to the advance parole part of the combo card.

[42] *See* 8 CFR 274a.12(c)(10).

[43] *See* 8 CFR 274a.12(c)(16).

[44] *See* 8 CFR 274a.12(c)(19).

[45] *See* 8 CFR 274a.12(c)(20).

[46] *See* 8 CFR 274a.12(c)(22).

[47] *See* 8 CFR 274a.12(c)(24).

[48] *See* 8 CFR 274a.12(c)(26).

[49] Family-based immigration generally requires U.S. citizens and lawful permanent residents to file a petition on behalf of their alien family members. Some petitioners may misuse this process to further abuse their alien family members by threatening to withhold or withdraw sponsorship in order to control, coerce, and intimidate them. With the passage of VAWA and its subsequent reauthorizations, Congress provided aliens who have been abused by their U.S. citizen or lawful permanent resident relative the ability to petition for themselves (self-petition) without the abuser's knowledge, consent, or participation in the process. The VAWA provisions allow victims to seek both safety and independence from their abusers.

[50] INA sec. 204(a)(1)(D)(i)(II), (IV), (a)(1)(K), 8 U.S.C. 1154(a)(1)(D)(i)(II), (IV), (a)(1)(K).

[51] *See* 8 CFR 274a.13(d)(3).

[52] *See* 8 CFR 274a.13(d)(4).

[53] *See* DHS,USCIS, ''Completing Supplement B, Reverification and Rehires (formerly Section 3),'' *https://www.uscis.gov/i-9-central/complete-correct-form-i-9/completing-supplement-b-reverification-and-rehires-formerly-section-3* (last visited June 16, 2025); *see also* DHS, USCIS, *M–274 Handbook for Employers, 5.2 Temporary Increase of Automatic Extension of EADs from 180 Days to 540 Days* (last visited June 16, 2025), *https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/50-automatic-extensions-of-employment-authorization-andor-employment-authorization-documents-eads-in/52-temporary-increase-of-automatic-extension-of-eads-from-180-days-to-540-days* (last visited June 16, 2025).

[54] *See* 8 CFR 274a.13(d)(3).

[55] *See* 8 CFR 274a.2(b)(vii) (reverification provision).

[56] *See* 87 FR 26614, 26617–26 (May 4, 2022) (identifying USCIS' precarious fiscal status, the COVID–19 public health emergency, and dramatic increases in Form I–765 filings); *see also* 89 FR 24628, 24634–40 (Apr. 8, 2024) (identifying an increase in referrals to USCIS for Credible Fear Assessment and an increase in affirmative and defensive asylum filings as contributing factors to increased EAD processing times).

[57] 87 FR 26614 (May 4, 2022) (temporarily increased the automatic extension period to up to 540 days).

[58] 89 FR 24628 (Apr. 8, 2024) (temporarily increased the automatic extension period to up to 540 days).

[59] 89 FR 101208 (Dec. 13, 2024) (permanently increased the automatic extension period to up to 540 days).

[60] 87 FR 26614, 26622, 26625 (May 4, 2022).

Fee Rule, meaning that USCIS was unable to fully cover the costs of administering current and projected volumes of immigration benefit requests.[61]

This precarious financial situation was exacerbated by the COVID–19 pandemic,[62] which caused a significant drop in receipts across many of the most common benefit types, resulting in a commensurate drop in revenues.[63]

Consequently, USCIS was forced to take steps to preserve sufficient funds to meet payroll and carryover obligations by cutting overtime contractor support services and imposing an agency-wide hiring freeze from May 1, 2020, through March 31, 2021. These cuts hindered USCIS' ability to address and mitigate backlogs and ensure processing times remained within goals.[64]

An additional contributing factor was a substantial and sustained increase in initial and renewal EAD applications which significantly increased renewal EAD processing times.[65] The increased filings resulted from, among other things, new TPS designations by the Biden Administration as well as increased filings related to asylum applications and DACA.[66]

To mitigate the impact of these operational challenges on EAD processing times, on May 4, 2022, DHS published a TFR titled ''Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants'' (2022 TFR) in the **Federal Register**.[67] The rule temporarily amended DHS regulations at 8 CFR 274a.13(d) by adding a new paragraph 8 CFR 274a.13(d)(5), which lengthened the automatic extension period provided in that section from up to 180 days to up to 540 days for those categories described in the 2022 TFR, if the renewal applicant timely filed a renewal EAD application.[68] That increase was available to eligible renewal applicants whose EAD applications were pending as of May 4, 2022, including those renewal applicants whose employment authorization had already lapsed following the initial 180-day extension period. The increase was also available to eligible aliens who filed a renewal EAD application during the 540-day period beginning on or after May 4, 2022, and ending October 26, 2023.[69] On October 27, 2023, the automatic extension renewal period reverted to 180 days (the automatic extension period under 8 CFR 274a.13(d)(1)) for eligible renewal EAD applications filed on or after October 27, 2023.[70]

2. Circumstances Resulting in the 2024 Temporary Final Rule

As discussed later in this preamble, in FY2023, the adjudicative demands caused by the Biden Administration's approach to the border crisis,[71] and other increases in immigration benefit filings and court-ordered processing timeframes,[72] created new operational strains that significantly increased renewal EAD application processing times.

Specifically, the Biden Administration's encouragement of new asylum applicants, the decision to reassign USCIS employees to perform credible fear assessments[73] for the flood of new asylum applicants,[74] and the additional TPS designations[75] combined to create renewal EAD application processing backlogs such that large numbers of renewal EAD applicants eligible for the up to 180-day automatic extension were projected to nonetheless experience a gap in their EAD validity and/or employment authorization.[76]

The primary drivers in the growth of EAD applications in FY 2023 (both initials and renewals) were EAD applications based on pending asylum applications (C08), followed by TPS (A12/C19) and parole (C11).[77] The efforts USCIS undertook to improve its processing times for renewal EAD applications, including increasing its staffing levels, were insufficient to keep up with the substantial increase in EAD application filings.

In April 2024, in order to reduce the number of renewal EAD applicants who were projected to experience a lapse in their EAD validity and/or employment authorization, DHS published a temporary final rule (''2024 TFR'') that, for certain renewal EAD applications filed from October 27, 2023, through September 30, 2025, again temporarily increased the automatic extension period from up to 180 days to up to 540 days.[78]

[61] 87 FR 26614, 26620 (May 4, 2022).

[62] On January 31, 2020, the Secretary of Health and Human Services (HHS) declared a public health emergency under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID–19.*See* HHS, Determination that a Public Health Emergency Exists, *https://aspr.hhs.gov/legal/PHE/Pages/2019-nCoV.aspx* (last visited June 16, 2025).

[63] In addition to the lowest number of receipts in the past 5 years, USCIS also completed the lowest number of benefit requests in the past 5 years. The worst rates of completion were observed during the beginning of the pandemic when USCIS field offices and ASCs were closed to the public. While USCIS attempted to recover by shifting adjudications to form types not requiring in-person appearances, USCIS still completed fewer benefit requests than it received in FY 2020. *See* 2020 USCIS Statistical Annual Report, p. 4., *https://www.uscis.gov/tools/reports-and-studies* (last updated May 28, 2025).

[64] 87 FR 26614, 26620–26621 (May 4, 2022).

[65] 87 FR 26614, 26624 (May 4, 2022).

[66] 87 FR 26614, 26618 (May 4, 2022).

[67] 87 FR 26614 (May 4, 2022).

[68] *See* 8 CFR 274a.13(d); *see also* 87 FR 26614, 26651 (May 4, 2022).

[69] *See* 8 CFR 274a.13(d); *see also* 87 FR 26614, 26651 (May 4, 2022).

[70] *See* 87 FR 26614, 26631 (May 4, 2022).

[71] As noted in the April 2024 EAD TFR, CBP had a record number of encounters at the U.S. southern border throughout FY 2022 and 2024. See 89 FR 24628, 24637.

[72] As a result of the court order in *Asylumworks* v. *Mayorkas,* 590 F. Supp. 3d 11 (D.D.C. Feb. 7, 2022), since February 7, 2022, USCIS has been required to process initial EAD applications for all asylum applicants within 30 days of filing for their EAD. The burden created by the court's order was significant and impacted overall EAD processing due to the surge in C08 EAD applications.

[73] Under the INA, certain aliens arriving at the U.S. border but who are inadmissible to the United States on certain grounds, may be removed expeditiously under the INA without a hearing unless the alien indicates either an intention to apply for asylum under section 208, 8 U.S.C. 1158, or expresses a fear of persecution or torture. *See* INA sec. 235(b)(1)(A)(i)–(iii), 8 U.S.C. 1225(b)(1)(A)(i)–(iii). If that is that is the case, then the officer at the border refers the alien to a USCIS asylum officer for a credible fear assessment. If the alien has a credible fear of persecution or torture, the individual may apply for asylum and remain in the United States until a final determination is made on the asylum application by an immigration judge, or, in some cases, by a USCIS asylum officer. Such an asylum applicant is also authorized to apply for an EAD, and subsequently, renewal EADs in accordance with the regulations.

[74] To address the impact of these high numbers of credible fear referrals from the southwest border on existing asylum and credible fear procedures, USCIS detailed USCIS personnel, including officers who adjudicate EAD applications, to the USCIS RAIO directorate for up to 120 days to conduct credible fear screenings. Many USCIS detailees were required to take a full-time asylum officer training course lasting several weeks in addition to the 120-day detail period. Diverting adjudicatory resources by training and detailing adjudicators to conduct credible fear screenings significantly strained operational resources for renewal EAD adjudications, resulting in increased processing times.

[75] Over the course of FY 2022 and FY 2023, the Secretary of Homeland Security, in consultation with interagency partners, designated, redesignated, and extended the designation of several countries for TPS under section 244 of the INA, 8 U.S.C. 1254a. The increased number of TPS-based EAD filings (particularly in renewal EAD applications in the A12 category) from FY 2022 to FY 2023 further stretched limited USCIS resources and contributed to the longer processing times for renewal EAD applications overall. For a current list of designated countries, *see* DHS, USCIS, *Temporary Protected Status, https://www.uscis.gov/humanitarian/temporary-protected-status* (last visited June 16, 2025).

[76] USCIS projected that without the 2024 TFR, approximately 800,000 renewal applicants would have been in danger of experiencing a lapse in their EAD validity and/or employment authorization in the period beginning May 2024 and ending March 2026. See 89 FR 24628, 24660 (Table 7) (Apr. 8, 2024).

[77] 89 FR 24628, 24635.

[78] *See* 89 FR 24628 (Apr. 8, 2024). The 2024 TFR increased the automatic extension period from up

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3. Circumstances Resulting in the 2024 Final Rule

After the promulgation of the 2024 TFR, DHS determined that if the automatic extension period were not permanently increased to 540 days, future renewal EAD applicants could be in danger of experiencing a gap in EAD validity and/or employment authorization.[79] After having considered all operational realities, to include the potential for a renewed surge in EAD application filings or other circumstances that may occur in the future and which could result in large numbers of renewal EAD applications remaining pending beyond the 180-day automatic extension period, DHS determined that without a permanent 540-day automatic extension period there could be significant loss of EAD validity and/or employment authorization.[80] Accordingly, on December 13, 2024, DHS published a final rule that codified the automatic extension period increase from up to 180 days to up to 540 days.[81] This final rule was effective on January 13, 2025.

Unlike the 2022 and 2024 TFRs, the final rule was not issued to address short-term issues with renewal EAD processing times. Instead, the stated purpose of the final rule was to mitigate the impact of potential future renewal EAD processing backlogs that may be caused by a variety of circumstances.[82]

IV. Discussion of This Interim Final Rule

Aliens who timely filed a renewal EAD application for certain employment authorization categories were eligible for the automatic extension of their EADs for up to 540 days.[83] This IFR amends DHS regulations to end the practice of automatically extending the validity of EADs. *See* new 8 CFR 274a.13(e). This IFR will not impact the automatic extensions already granted to renewal EAD applicants under 8 CFR 274a.13(d)(1), if the renewal EAD request was filed before October 30, 2025. *See* 8 CFR 274a.13(d). This IFR also does not impact automatic extensions otherwise provided by law or in an applicable **Federal Register** notice regarding procedures for extending the validity of TPS-related employment documentation pursuant to section 244 of the INA, 8 U.S.C. 1254a, and 8 CFR part 244.[84]

DHS's mission is to safeguard the American people, our homeland, and our values with honor and integrity. In service of that mission, DHS protects the United States from threats by terrorists, criminals, smugglers, transnational criminal organizations, failed state actors, and unpredictable lone offenders that constitute present and future threats to public safety and national security.

As explained earlier in this preamble, USCIS issues EADs to certain classes of aliens. These documents are valid for a specified period of time. Aliens who intend to continue their employment beyond the date specified on their EAD must generally file an application to renew their employment authorization and/or EAD. This renewal EAD requirement allows DHS to ensure that the alien continues to be eligible for employment authorization, including warranting a favorable exercise of discretion, when applicable, or continues to be employment authorized incident to their status or circumstance. USCIS makes the determination of eligibility through the adjudication of the Form I–765, Application for Employment Authorization. Adjudication of the application is critical as it involves an eligibility determination for the benefit, vetting and screening to ensure there are no identifiable threats to national security or public safety, and, for certain categories, an exercise of discretion.

The automatic extension of the validity of an EAD grants the benefit of extending an alien's expired EAD and/or employment authorization merely by filing a timely renewal EAD application and without first completing adjudicative review and related vetting, including resolution of derogatory information identified during the vetting process. That is, it grants the benefit without an eligibility determination; without completing vetting and screening checks; without resolving potential hits of derogatory information; and, when applicable, without a determination that the employment authorization should be granted in the exercise of discretion. Without this IFR, aliens could still obtain an automatic extension despite derogatory information that could flag them as a national security or public safety risk. As described above, vetting and screening might not be completed and derogatory information reviewed and resolved before the alien's EAD expires. The automatic extension, therefore, poses a security vulnerability that could allow bad actors to continue to work and generate income to potentially finance nefarious activities that pose an imminent threat to the American public. Granting benefits without proper vetting and full adjudication is contrary to the mission of DHS and poses a threat to the safety and security of the American people.[85]

Therefore, DHS is ending the practice of providing automatic extension of EADs to fulfill its mission by prioritizing the proper vetting and screening of aliens before granting a new period of employment authorization and/or a new EAD. DHS will also continue to work to reduce frivolous, fraudulent or otherwise non-meritorious EAD filings to free up adjudicatory and other resources to better ensure national security and program integrity.

Ending the practice of providing automatic extensions of EADs is also consistent with President Trump's directive in E.O. 14159 ''Protecting the American People Against Invasion,'' which directs the Secretary of Homeland Security, in coordination with the Secretary of State and the Attorney General, in Section 16 to take all appropriate action to align any departmental activities with the policies set out by the President and to ensure, among others, ''that employment authorization is provided in a manner consistent with section 274A of the INA (8 U.S.C. 1324a), and that employment authorization is not provided to any unauthorized alien in the United States.'' [86] It is also consistent with E.O. 14161, Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats (Jan. 20, 2025),[87] which directs the Secretary of State, in coordination with the Secretary of Homeland Security, the Attorney General, and the Director of National Intelligence in

to 180 days to up to 540 days for aliens who properly filed their renewal EAD applications on or after October 27, 2023, and that remained pending on May 4, 2024, as well as renewal EAD applications filed from May 4, 2024, through September 30, 2025.

[79] 89 FR 101208, 101216.

[80] 89 FR 101208, 101224.

[81] *See* 89 FR 101208 (Dec. 13, 2024).

[82] *See* 89 FR 101208, 101224.

[83] *See* 89 FR 101208.

[84] DHS notes, however, that sections 100003(c) and 100012(a) of the One Big Beautiful Bill Act, Public Law 119–21 (July 4, 2025), limits the validity period of any employment authorization for aliens granted Temporary Protected Status (TPS) under section 244 of the INA, 8 U.S.C. 1254a, to a period of 1 year or for the duration of the designation of TPS, whichever is shorter.

[85] *See, e.g.,* Conference Report to accompany H.R. 4567 [Report 108–774], ''Making Appropriations for the Department of Homeland Security for the Fiscal Year Ending September 30, 2005,'' p. 74 (Oct. 9, 2004), *https://www.gpo.gov/fdsys/pkg/CRPT-108hrpt774/pdf/CRPT-108hrpt774.pdf* (recommending, among other things, the creation of an organization to conduct ''law enforcement/background checks on every applicant, beneficiary, and petitioner prior to granting immigration benefits.'') (last visited June 16, 2025).

[86] *See* 90 FR 8443, 8446 (Jan. 29, 2025).

[87] *See* 90 FR 8451, 8451 (Jan. 31, 2025).

Section 2 to promptly ''identify all resources that may be used to ensure that all aliens seeking admission to the United States, or who are already in the United States, are vetted and screened to the maximum degree possible,'' and ''vet and screen to the maximum degree possible all aliens who intend to be admitted, enter, or are already inside the United States, particularly those aliens coming from regions or nations with identified security risks.'' [88]

This IFR is also supported by the Presidential Proclamation ''Restricting the Entry of Foreign Nationals to Protect the United States from Foreign Terrorists and Other National Security and Public Safety Threats,'' wherein the President noted that the ''United States must ensure that admitted aliens and aliens otherwise already present in the United States do not bear hostile attitudes toward its citizens, culture, government, institutions, or founding principles, and do not advocate for, aid, or support designated foreign terrorists or other threats to our national security.'' [89] The President also noted that ''it is the policy of the United States to protect its citizens from terrorist attacks and other national security or public-safety threats'' and that ''[s]creening and vetting protocols and procedures associated with visa adjudications and other immigration processes play a critical role in implementing that policy.'' [90] As such, the President has made clear that a primary goal of this administration is to ensure that admitted aliens and aliens otherwise already present in the United States do not bear hostile attitudes toward its citizens, culture, government, institutions, or founding principles, and do not advocate for, aid, or support designated foreign terrorists and other threats to our public safety and national security.

DHS recognizes the differences between the various employment authorization categories under 8 CFR 274a.12(a) and (c), including the different underlying benefit requests, statuses, and circumstances upon which employment authorization is based. DHS, however, has decided to take a uniform approach in this IFR by ending the practice of providing automatic extensions of employment authorization and/or EADs for all affected categories. A uniform approach avoids the potential for confusion among the regulated public, particularly employers who must comply with Form I–9 employment eligibility verification paperwork requirements or face potential adverse consequences, including possible civil or criminal penalties depending on the nature and extent of the violation(s). Additionally, it also advances the goal of providing a comprehensive policy solution and administrative simplicity.

A. Negative Impact of Prior Policies

Over the last four years, the prior administration invited, administered, and oversaw an unprecedented flood of immigration into the United States. Millions of aliens crossed our borders or were permitted to fly directly into the United States on commercial flights and allowed to settle in American communities.[91]

Some of these aliens within the United States present significant threats to national security and public safety, committing vile and heinous acts against innocent Americans.[92] Others are engaged in hostile activities, including espionage, economic espionage, and preparations for terror-related activities.[93] Enforcing our Nation's immigration laws is critically important to the national security and public safety of the United States. The American people deserve a Federal Government that puts their interests first and a government that understands its sacred obligation to prioritize the safety, security, and financial and economic well-being of Americans.[94]

1. Impact of EAD Automatic Extensions on Public Safety and National Security

The immigration policies of the prior administration encouraged a historically high influx of EAD applicants, resulting in over one million aliens being granted employment authorization in under one year.[95] The overwhelming flood of EAD applicants continues to bog down USCIS processing times and adjudicative resources.

To address this unmanageable influx of EAD applications, which was largely caused by the prior administration's policies that allowed a significant number of aliens to enter the country on parole and seek asylum and/or TPS, and alongside such applications, employment authorization, DHS issued two temporary rules and a final rule to triple the automatic extension period from a maximum of 180 days to a maximum of 540 days. The 2024 final rule made this change permanent in order to try to reduce the impact of potential future renewal EAD processing backlogs based on events that had not yet materialized, but could happen in the future—thus, the final rule was based on speculative assumptions given the operational realities at USCIS at the time.[96]

These automatic extensions, however, resulted in a substantial number of aliens being granted automatically extended EADs and being permitted to continue working lawfully without the completion of appropriate vetting and screening of such aliens relating to their renewal applications.[97] In other words,

[88] *See* 90 FR 8451, 8451 (Jan. 31, 2025).

[89] Proclamation 10949 (June 4, 2025), 90 FR 24497–98 (June 10, 2025).

[90] Proclamation 10949 (June 4, 2025), 90 FR 24497–98 (June 10, 2025).

[91] *See* E.O. 14159, Protecting the American People Against Invasion, Section 1, Purpose, 90 FR 8443 (Jan. 29, 2025); *see also* Andre Byik, USA Today, No, 51M 'illegals' have not entered US under Biden, Harris | Fact check (Aug. 12, 2024), *https://www.usatoday.com/story/news/factcheck/2024/08/12/51-million-border-illegally-biden-fact-check/74595944007/* (relaying that U.S. Border Patrol data showed in the range of 10 million nationwide encounters, and that figure is imprecise because of overcounts and ''people who are not turned back or apprehended after making an illegal entry'').

[92] See E.O. 14159, Protecting the American People Against Invasion, Section 1. Purpose, 90 FR 8443 (Jan. 29, 2025; *see also* Adam Shaw, Fox News, *Over 1.7M migrants who could pose national security risk arrived in US during Biden admin: report* (Oct. 3, 2024), *https://www.foxnews.com/politics/over-1-7-million-migrants-who-could-pose-national-security-risk-arrived-us-biden-admin-report* (citing an Oct. 3, 2024 House of Representatives Judiciary Committee report on The Biden-Harris Border Crisis: At Least 1.7 Million Potential National Security Threats).

[93] *See* E.O. 14159, Protecting the American People Against Invasion, Section 1. Purpose, 90 FR 8443 (Jan. 29, 2025; *see also* Simon Hankinson, The Heritage Foundation, *Biden's Border Crisis Promotes Foreign Espionage in Plain Sight* (May 31, 2024). *https://www.heritage.org/border-security/commentary/bidens-border-crisis-promotes-foreign-espionage-plain-sight* (arguing that asylum provides an avenue for employment authorization that attracts Chinese nationals who are primed to become espionage assets).

[94] *See* E.O. 14159, Protecting the American People Against Invasion, Section 1. Purpose, 90 FR 8443 (Jan. 29, 2025).

[95] *See* DHS, USCIS, *Number of Service-wide Forms By Quarter, Form Status, and Processing Time* (July 1–Sept. 30, 2023), *https://www.uscis.gov/sites/default/files/document/forms/quarterly_all_forms_fy2023_q4.pdf* (last visited Sept. 22, 2025) (showing that USCIS approved almost 3 million Forms I–765 during the data period). *See also Annual Statistical Report FY2023,* p.14 (acknowledging that in ''FY 2023, USCIS received over 3.5 million applications for employment authorization, 50 percent more than the previous year, and completed over 3.4 million applications, 45 percent more than in FY 2022.''), *https://www.uscis.gov/sites/default/files/document/reports/fy2023_annual_statistical_report.pdf.*

[96] *See* 89 FR 101208, 101245 (noting ''the purpose of this final rule is to provide a long-term solution to mitigate the potential for unpredictable circumstances to significantly increase renewal EAD application processing times that would require future urgent action).

[97] *See, e.g.,* 89 FR 101208, 101224 (Table 7, showing that, as of February 2024, USCIS had approximately 439,000 pending renewal EAD requests in the categories eligible for automatic extension, and the number was projected to grow

Continued

while these applicants were screened in the context of their initial EAD application(s), the automatic extensions allows them to have their EADs extended, for up to 540 days, without the complete and proper vetting that would be done when adjudicating the renewal application. This delay could impede DHS from timely identifying derogatory information or other concerns that may have arisen since the adjudication of the initial EAD.

Through this IFR, DHS intends to address prior policy decisions that, as described in the preceding sections, resulted in the filing of over 3 million EAD applications, resulting in substantial backlogs across all EAD adjudications.[98]

This administration's priority is the robust vetting of all aliens in our country to better protect the safety of American workers and the public at large. This rule will enhance public safety by ensuring proper vetting before issuing renewal EADs, which are important benefits, and improve program integrity. DHS is enhancing its vetting and screening efforts, increasing its ability to detect aliens with potentially harmful intent, deter fraud, and place removable aliens into proceedings. USCIS uses all provisions under the law, to the extent permissible under the law, to deny benefits to those who are a risk to public safety and national security. This rulemaking ends the practice of automatically extending the validity of employment authorization documents, so that DHS can take appropriate action before an immigration benefit is again provided to an alien.

The need to conduct complete and thorough vetting of applicants for renewal EADs to mitigate potential risks to public safety and national security became abundantly clear on June 1, 2025, when an alien firebombed and assaulted demonstrators at a peaceful Jewish event to support hostages in Gaza.[99] The alien threw Molotov cocktails that burned multiple victims, and his attack injured 15 people.[100] The alien had entered the United States in August 2022 and remained in the United States beyond the expiration of his nonimmigrant status.[101] He applied for asylum in September 2022, and that application was still pending at the time of the attack.[102] He also obtained an EAD based on a pending asylum application which was then automatically extended for a period of up to 540 days.[103] This attack by an alien against peaceful demonstrators highlights the critical need and urgency to ensure that aliens are not provided immigration benefits in the United States without thorough vetting and more frequent determinations of continued eligibility and, when applicable, determinations that the alien continues to merit a favorable exercise of discretion.

DHS has determined that the automatic extension of EADs provides a significant benefit to aliens without adequate vetting and is therefore not consistent with the E.O.s and the administration's priorities. The automatic extension of an EAD grants the benefit of extending an alien's expired EAD and/or employment authorization merely by filing a timely renewal EAD application and without first completing adjudicative review and related vetting, including resolution of any derogatory information identified during the vetting process. That is, it grants the benefit without a concurrent eligibility determination; without concurrently completing vetting and screening checks; without resolving potential hits of derogatory information in connection with the alien; and without a determination that the employment authorization should be renewed in the exercise of discretion, when applicable. As stated previously, without this IFR, aliens could still obtain an automatic extension despite derogatory information that could flag them as a national security or public safety risk. The automatic extension therefore poses a security vulnerability that could allow bad actors to continue to work and generate income to potentially finance nefarious activities that pose an imminent threat to the American public.

For these reasons, DHS is amending its regulations to no longer provide automatic extension of EADs for renewal applicants who have timely filed Form I–765, Application for Employment Authorization (Form I–765). *See* new 8 CFR 274a.13(e).

2. Impact of the EAD Automatic Extension Final Rule on Employment Authorization Eligibility

In addition to concerns with vetting to better protect the safety and security of the United States, DHS, and specifically USCIS, is charged with ensuring that only those aliens who are eligible are granted employment authorization and/or an EAD. This was highlighted in E.O.14159, Protecting the American People Against Invasion, where the Secretary was directed to ensure ''that employment authorization is provided in a manner consistent with section 274A of the INA (8 U.S.C. 1324a), and that employment authorization is not provided to any unauthorized alien in the United States.'' [104]

As stated previously, prior DHS rules codified automatically extending employment authorization and/or an EAD for a period of up to 540 days. This grant occurs before USCIS determined that the alien continues to be eligible for the benefit sought and, when applicable, continues to merit a favorable exercise of discretion. For the reasons discussed above, DHS now believes this is a security vulnerability, and that the risk posed by such a vulnerability outweighs the benefit provided by automatically extending employment authorization and/or EADs. Furthermore, with automatic extensions of employment authorization and/or EADs, employers are more vulnerable to inadvertently employ aliens that do not have employment authorization because the

given that USCIS received an average of approximately 52,800 additional automatic extension-eligible renewal EAD applications per month in FY 2023, which exceeded the approximately 49,100 automatic extension-eligible renewal EAD application completions per month at that time).

[98] *See USCIS, Annual Statistical Report FY2023, p.14 (acknowledging that in ''FY 2023, USCIS received over 3.5 million applications for employment authorization, 50 percent more than the previous year, and completed over 3.4 million applications, 45 percent more than in FY 2022.''), https://www.uscis.gov/sites/default/files/document/reports/fy2023_annual_statistical_report.pdf.*

[99] *See* Colleen Slevin and Jesse Bedayn, Man Accused of Yelling 'Free Palestine' and Firebombing Demonstrators Charged with Attempted Murder, The Associated Press, June 5, 2025, *https://apnews.com/article/boulder-firebombing-attack-9820f4b51d73efc3da72150b80634ea2* (last visited June 16, 2025).

[100] *Id.*

[101] USCIS, CBP, ICE, and USCIS to Ramp Up Crackdown on Visa Overstays Following Boulder Terrorist Attack, June 4, 2025, *https://www.uscis.gov/newsroom/news-releases/cbp-ice-and-uscis-to-ramp-up-crackdown-on-visa-overstays-following-boulder-terrorist-attack* (last visited June 16, 2025); *see also* DHS, Secretary Noem Announces ICE Detains Boulder Terrorist Soliman's Family, June 4, 2025. *https://www.dhs.gov/news/2025/06/04/secretary-noem-announces-ice-detains-boulder-terrorist-solimans-family* (last updated June 5, 2025); s*ee* Adam Sabes, Timeline Exposes Boulder Suspect's Movements Before Allegedly Carrying out Firebomb Attack on Pro-Israel Group, Fox News, June 3, 2025, *https://www.foxnews.com/us/timeline-exposes-boulder-suspects-movements-before-allegedly-carrying-out-firebomb-attack-pro-israel-group* (last visited June 16, 2025).

[102] *See* DHS, Secretary Noem Announces ICE Detains Boulder Terrorist Soliman's Family, June 4, 2025, *https://www.dhs.gov/news/2025/06/04/secretary-noem-announces-ice-detains-boulder-terrorist-solimans-family* (last visited June 4, 2025).

[103] *See* NBC Washington, US immigration authorities detain family of Colorado Molotov attack suspect, June 3, 2025, *https://www.nbcwashington.com/news/national-international/colorado-attack-backed-off-zionist-scared/3927308/?os=io....sxj9oul93fno_journeystrue&ref=app&noamp=mobile* (last visited June 16, 2025).

[104] *See* 90 FR 8443, 8446.

employer is dependent on the truthfulness of the alien in reporting whether the renewal EAD request was approved or denied prior to the end of the 540-day automatic extension.

During the prior rulemakings, DHS has recognized the risks associated with lengthy automatic extension of employment authorization; DHS acknowledged that the longer the period of time before an employer has to reverify an alien employee whose employment authorization is automatically extended, the greater the risk that the employer could unknowingly employ someone whose employment authorization has ended.[105] Renewal EAD applications are filed by the alien, so employers do not typically know when or if the application is approved or denied; employers rely on the employee to provide the information. The employer also relies on a non-secure document presented by the alien when the alien's employment authorization is based on an automatic extension.[106]

B. Administration Policies To Reduce EAD Filings Overall

As discussed above, there was an unprecedented flood of illegal immigration into the United States during the prior administration. This, in turn, encouraged a historically high influx of EAD applications, resulting in over three million applications being filed within one year.[107] The overwhelming flood of EAD applicants bogged down USCIS processing times and adjudicative resources.

It is the policy of the Trump Administration ''to faithfully execute the immigration laws against all inadmissible and removable aliens, particularly those aliens who threaten the safety or security of the American people.'' [108] Pursuant to this policy, the Secretary of DHS, in collaboration with the Secretary of State and the Attorney General have been directed by the President to ''rescind the policy decisions of the previous administration that led to the increased or continued presence of illegal aliens in the United States, and align any and all departmental activities with the policies set out by this order and the immigration laws'' including by ''ensuring that the parole authority under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) is exercised on only a case-by-case basis in accordance with the plain language of the statute'' and by ''ensuring that designations of Temporary Protected Status are consistent with the provisions of section 244 of the INA (8 U.S.C. 1254a), and that such designations are appropriately limited in scope and made for only so long as may be necessary to fulfill the textual requirements of that statute.'' [109]

DHS has already taken a number of actions in support of these directives.[110] Accordingly, DHS does not anticipate a further influx of initial and renewal EAD applications that will overwhelm USCIS adjudicative resources. Thus, in addition to the serious concerns relating to automatic EAD extensions discussed previously, given that DHS has taken the above described measures addressing floods of filings from TPS and other applicants, DHS expects that overall EAD filing rates (initials and renewals) are likely to substantially decline, freeing up adjudicative resources to reduce renewal EAD processing times and the need for renewal EAD applicants in the longer term to rely on an automatic extension of their EAD to avoid lapses in employment authorization and/or EADs due to processing delays.

C. IFR Impact on Aliens and Employers

1. Reliance Interests

DHS is cognizant that the current regulatory and policy framework involving renewal EAD applications and automatic extensions may have engendered reliance interests. Aliens, their families, and employers may have relied on the automatic extensions to maintain the alien's continuous employment authorization and/or EADs and to avoid lapses in employment authorization that may be detrimental to the alien, their family's finances, and their employer's operations.[111] Some aliens may have also relied on the automatic extension of their EAD to obtain other forms of identification, such as driver's licenses.[112] DHS is mindful of the disruption that may occur when employment authorization and/or EADs temporarily lapse.

However, as explained below, DHS believes that the weight of these interests is significantly diminished by various factors, and therefore, that the government's interests and policy concerns underlying this rulemaking outweigh these interests. DHS notes that with this rule, DHS is merely discontinuing the practice of providing an automatic extension of the EAD or employment authorization upon the filing of a renewal EAD application, because it grants a benefit without an eligibility determination, without completing vetting and screening checks, and without resolving the potential hits and derogatory information. This IFR does not remove the ability of aliens to obtain a renewal of their EADs and/or employment authorization. DHS is also not preventing eligible aliens from obtaining EADs for purposes such as proof of identity.

[105] *See* 89 FR 24628, 24648 (Apr. 8, 2024).

[106] Increasing the automatic extension period also frustrates the ability of state agencies to issue benefits such as driver's licenses for aliens, but also for others owing to the delays that seeking SAVE verification of immigration status causes. *See* 89 FR 101208, 101240 (explaining that a commenter raised a concern that, although USCIS is making improvements to the SAVE system, many cases presented to front-line motor vehicle service clerks require additional verifications that cannot be verified at the time of transaction if the document presented to show immigration status is an automatically extended EAD. Manual verification by SAVE (also called ''additional verification'') can require applicants to revisit service locations to repeat transactions and disrupt the ability of the states to serve other customers as they explain the need for additional verification).

[107] *See* USCIS, *Annual Statistical Report FY2023,* p.14 (acknowledging that in ''FY 2023, USCIS received over 3.5 million applications for employment authorization, 50 percent more than the previous year, and completed over 3.4 million applications, 45 percent more than in FY 2022.''), *https://www.uscis.gov/sites/default/files/document/reports/fy2023_annual_statistical_report.pdf.*

[108] 90 FR 8443, 8446.

[109] *See* 90 FR 8443, 8446.

[110] *See, e.g., Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans,* 90 FR 13611 (Mar. 25, 2025); *Termination of the October 3, 2023 Designation of Venezuela for Temporary Protected Status,* 90 FR 9040 (Feb. 5, 2025); *Special Immigrant Juvenile Classification and Deferred Action,* USCIS Policy Alert (June 6, 2025) *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20250606-SIJDeferredAction.pdf* (last accessed June 13, 2025).

[111] DHS acknowledges that the loss of employment authorization for asylum applicants may pose additional challenges given that they may be in a precarious financial situation due to circumstances such as fleeing persecution in their home country. *See* 89 FR at 101224.

[112] DHS also acknowledges that a valid EAD may be necessary for certain aliens, such as for asylees and TPS beneficiaries, for proof of identity or immigration status to establish identity for purposes such as obtaining a REAL ID-compliant driver's license or identification card. *See* 89 FR at 101225; *see* Real ID Act of 2005, Public Law 109–13, div. B. Title II, Sec. 201(3) (May 11, 2005); 6 CFR 37.11(c). Following the full implementation of REAL ID requirements, if an individual chooses to present a state-issued driver's license or identification card for defined official purposes, including access to certain Federal facilities and boarding federally regulated commercial aircrafts, the driver's license or identification card must be REAL–ID compliant. DHS reasoned that without the automatic extension of the EAD, these aliens may not be able to obtain REAL–ID compliant driver's licenses or identification cards. Given the security posture of this country at this time, DHS believes it is utterly unwise to allow aliens, such as the alien in Boulder, Colorado, who was an asylum applicant, to obtain identification cards and driver's licenses based on an expired EAD that is automatically extended by a Form I–797C receipt notice that was issued without having more recently assessed the alien's continued eligibility and potential for security risk—especially if these REAL ID cards provide access to Federal Facilities and our airports.

Furthermore, DHS and USCIS have been provided with considerable flexibility by Congress under sections 103(a) and 274A of the INA, 8 U.S.C. 1103(a) and 1324a, among other provisions, to administer and enforce the INA, including the granting of employment authorization and the issuance of EADs. There is no explicit statutory mandate that requires DHS to provide an automatic extension of EAD validity and/or employment authorization for aliens filing renewal EAD applications under 8 CFR 274a.12(a) or (c).

Additionally, the issuance of a renewal EAD and/or employment authorization depends in large part on the applicant's timely filing of a renewal EAD application. The proper planning by the alien and the employer, and monitoring of EAD processing times, may allow the alien to timely file a renewal EAD application as soon as eligible, thus mitigating the risk for the alien, the alien's family, as well as the employer that the alien will experience prolonged lapses in their EAD validity and/or employment authorization. Proper planning may ameliorate the risk of losing valid employment authorization, as well as the disruption and associated instability with business continuity or other financial harm for employers and the community as a whole.

DHS believes this rule will increase the security posture of the United States as an alien's EAD validity and employment authorization will only be extended based on the issuance of a secure document issued after USCIS has determined that the applicant is eligible for the renewal EAD and warrants a favorable exercise of discretion, if applicable. As DHS noted in the 2024 Final Rule [113] and the preceding 2024 Temporary Final Rule,[114] DHS opted for an automatic extension period of no more than 540 days, to limit the amount of time employers would have to rely on a non-secure document, such as Form I–797C, Notice of Action, to assess the applicability of the automatic extension and run the risk of unwittingly continuing to employ a worker whose employment authorization is in fact no longer valid. Having one document only—a secure EAD card—may eliminate confusion for employers and other agencies for purposes of Form I–9 verification, issuing of driver licenses, or other benefits in the United States. This helps ensure that only aliens whose eligibility has been fully determined and background vetted are in possession of this important document that has the potential to grant access to many locations, including federal facilities and airports.

Thus, DHS believes the benefits of this rule to the United States outweigh any reliance interests held by the alien, his or her family, the employer or the public at-large in the automatic extensions of EADs to avoid temporary lapses in employment authorization and/or EADs. The Federal Government has a duty to protect U.S. national security, public safety, and the integrity of immigration benefits, and more specific to this rule, to better ensure that employment authorization is provided in a manner consistent with prohibiting the unlawful employment of aliens and is granted only after a determination is made that the alien continues to be eligible and, when applicable, continues to merit a favorable exercise of discretion. Any reliance interest in the current regulatory framework and policy does not outweigh the need to protect public safety and the integrity of immigration benefits and employment authorization.

2. Alternatives Considered

DHS considered returning to the up to 180-day automatic extension period, issuing interim EAD cards again, or delaying the issuance of this rule. DHS recognizes that these measures might reduce the impact on the affected regulated public and the public as a whole. However, these alternatives suffer the same flaws as the up to 540-day automatic extension. The automatic extension of an EAD, whether for 180 days, 540 days, or through the issuance of an interim EAD, grants the benefit of extending an alien's expired EAD and/or employment authorization merely by filing a timely renewal EAD application and without USCIS first completing adjudicative review and related vetting for the renewal, including resolution of any derogatory information identified during the vetting process. That is, it grants the benefit without an eligibility determination, without resolving potential hits of derogatory information in connection with the aliens, and without a determination that the employment authorization should be granted in the exercise of discretion, when applicable. If DHS pursued these options, aliens with derogatory information flagged during the background check process would nevertheless still obtain an automatic extension of 180 days, or an interim EAD, even if derogatory information cannot be reviewed and resolved, and their application denied, before the alien's EAD expires. These automatic extensions therefore pose a security vulnerability that could allow bad actors to continue to work and generate income to potentially finance nefarious activities that pose an imminent threat to the American public.

3. Employment Authorization Verification

This rule does not modify the current requirements an employer must follow for Form I–9 at 8 CFR 274a.2(b)(1)(vii) for reverifying employment authorization and documentation. USCIS, in general, issues Form I–797C, Notices of Action for any benefit request USCIS receives. The I–797C acknowledges receipt of the benefit request, to include the filing date, and provides general information to the applicant. To conform to the changes made by this rule, Notices of Action issued on or after October 30, 2025, will no longer contain information regarding automatic extensions of employment authorization documentation. Instead, USCIS will add appropriate information to the Notices of Action clearly indicating that the document is not evidence of employment authorization and cannot be used by itself or in conjunction with an expired EAD as proof of employment authorization. USCIS will also update I–9 Central on the USCIS website and the *Handbook for Employers,* M–274 to provide employees and employers with specific guidance on Form I–9 completion.

DHS will also inform other agencies that renewal EAD applicants will no longer receive an automatic extension of their EAD and/or employment authorization if they file their renewal EAD application on or after October 30, 2025. *See* 8 CFR 274a.13(e). If another agency accepts EADs for any purposes (such as identity or, in some situations, immigration status), then the agency should generally no longer consider as valid any unexpired EADs that bear a date that demonstrates that the EAD is expired (that are ''facially expired''), unless the applicant presents a Form I–797C, Notice of Action Receipt demonstrating that the alien had timely (such as, before the EAD expired) filed a renewal EAD application before October 30, 2025. Benefits granting agencies that are registered to use the SAVE [115] program to verify immigration status will receive a result that indicates

[113] *See* 89 FR 101208, 101232–33.

[114] *See* 89 FR 24628, 24648.

[115] SAVE is a program administered by USCIS and is used by Federal, state, and local benefit granting agencies to verify the immigration status of their benefit applicants in order for the agency to determine eligibility for the benefits they administer. *See* USCIS, About SAVE, *https://www.uscis.gov/save/about-save/about-save* (last visited June 16, 2025).

an expiration date of employment authorization (if any) [116] that does not include the up to 540-day automatic extension period.

D. Conclusion

Ending the practice of providing automatic extension of employment authorization documents enhances benefit integrity in adjudications of work authorization requests and will better protect public safety and national security by ensuring that aliens are properly vetted and determined to continue to be eligible, and when applicable, merit a favorable exercise of discretion, for employment authorization before such authorization is provided to the alien.

E. Description of Regulatory Changes: Adding New 8 CFR 274a.13(e) and Modifying the Heading of 8 CFR 274a.13(d)

1. Adding New 8 CFR 274a.13(e)

With this IFR, DHS is amending 8 CFR 274a.13 to add a new paragraph (e) that will be in effect immediately with the publication of this rule. With the new paragraph, DHS is eliminating the practice of providing automatic extension periods for EAD validity and/or employment authorization for up to 540 days for renewal applications filed on or after October 30, 2025. Therefore, renewal EAD applicants will no longer receive an up to 540-day automatic extension of their EAD and/or employment authorization if they file their application on or after October 30, 2025. *See new* 8 CFR 274a.13(e).

Except as otherwise provided by law, in 8 CFR 274a.13(d), or in accordance with applicable **Federal Register** notice regarding procedures for renewing TPS-related employment documentation, an alien's EAD validity and/or an alien's attendant employment authorization will expire as follows: For those aliens who are employment authorized incident to status under 8 CFR 274a.12(a), unless otherwise provided by law, their EAD will expire on the date after the end validity date stated on the face of the EAD. *See* new 8 CFR 274a.13(e)(1). Because the alien's employment authorization is tied to the alien's status in the United States, the employment authorization will expire or terminate when the alien's status in the United States expires or terminates. For example, an alien in L–2 nonimmigrant status as the spouse of an L–1 nonimmigrant is employment authorized incident to status.[117] If the L–2 nonimmigrant chooses to apply for an EAD to evidence his or her employment authorization, the EAD will expire as of the date indicated on the EAD card. In some cases that may be the same date as the expiration of the L–2's nonimmigrant status. But in other cases, the L–2 status expiration date may be after the EAD expiration date, particularly if the L–2 nonimmigrant travelled outside of the United States after obtaining an EAD and, upon return to the United States, was provided a new status expiration date that will expire after the EAD expires.[118] In that scenario, the L–2 nonimmigrant would remain employment authorized while in L–2 nonimmigrant status, even after the EAD expires, but the expired EAD would no longer be a valid document to evidence the L–2 nonimmigrant's employment authorization.[119] Once the alien is no longer in L–2 status (for example, the L–2 nonimmigrant status expires), the alien would no longer be employment authorized as an L–2 nonimmigrant because such employment authorization is dependent on being in L–2 nonimmigrant status.

For aliens who are not employment authorized incident to their immigration status and who instead must obtain employment authorization from USCIS pursuant to 8 CFR 274a.12(c), before accepting employment in the United States, such as adjustment of status applicants or aliens with a pending asylum application, USCIS determines the length of the period of employment authorization in the exercise of its discretion and thereafter, issues an EAD reflecting the validity period.[120] Therefore, the EAD will expire and the employment authorization will terminate the day after the end validity date stated on the face of the EAD, in the situations outlined in 8 CFR 274a.14, or for TPS applicants pursuant to section 244 of the Act and 8 CFR part 244.[121] *See* new 8 CFR 274a.13(e)(2).

For example, an alien with a pending adjustment of status application (Form I–485) is in possession of an EAD that expires on December 15, 2025. The alien's adjustment of status application has not yet been adjudicated and continues to be pending. The alien is eligible to apply for a renewal EAD based on the pending adjustment of status application. The alien applies for a renewal of the EAD after October 30, 2025. The alien will maintain continuous employment authorization if his or her renewal application is granted by the time his or her current employment authorization expires on December 15, 2025. If the renewal EAD application remains unadjudicated on December 16, 2025, the alien cannot continue to work for his or her employer on or after December 16, 2025, unless the alien is employment authorized on a separate basis. *See* new 8 CFR 274a.13(e). If the renewal EAD application is subsequently approved, the alien would again be employment authorized and may resume employment during the validity period stated on the new EAD. The longer an alien waits to file a renewal EAD application, the more likely it is that he or she may experience a temporary lapse in his or her EAD validity and/or employment authorization.

2. Modifying the Heading of 8 CFR 274a.13(d)

On December 13, 2024, DHS published a final rule amending 8 CFR 274a.13(d) to permanently increase the automatic extension period for certain employment authorization and/or EAD validity. The rule became effective on January 13, 2025.[122] DHS is retaining the provision granting an automatic extension for those aliens who had timely filed a renewal EAD request and who meet the requirements of 8 CFR 274a.13(d). To avoid confusion between the automatic extension period granted under 8 CFR 274a.13(d) for those renewal EAD requests filed prior to October 30, 2025, and those filed after the publication of this rule, DHS is amending existing 8 CFR 274a.13(d) by revising the paragraph's heading to reflect that the paragraph applies to renewal requests properly filed before October 30, 2025. With this IFR, DHS is not otherwise amending the provision.

This will ensure that this IFR does not retroactively affect those aliens who have already timely and properly filed a renewal EAD application before

[116] For example, in the case of an asylee, the SAVE response is ''asylee EA indefinite.''

[117] *See* INA sec. 214(c)(2)(E), 8 U.S.C. 1184(c)(2)(E).

[118] In this case, the new status expiration date is the date stated on the alien's Form I–94, Arrival Departure document.

[119] An L–2 can still have other evidence of documentation of work authorization, such as a Form I–94, Arrival/Departure Record, designated with the L–2S classification.

[120] Employment authorization granted pursuant to 8 CFR 274a.12(c) is generally granted in the discretion of the Secretary. *See* 8 CFR 274a.13(a)(1) (''The approval of applications filed under 8 CFR 274a.12(c), except for 8 CFR 274a.12(c)(8), are within the discretion of USCIS.'').

[121] For example, employment authorization may also end prior to the expiration date displayed on the EAD, in accordance with 8 CFR 274a.14, if exclusion or deportation proceedings are instituted against the alien; if a condition upon which the EAD was granted has not been met or no longer exists; or upon a showing that the information contained in the request for an EAD was not true and correct.

[122] *See* 89 FR 101208 (Dec. 13, 2024).

October 30, 2025. For these aliens, an EAD that appears on its face to be expired (''facially expired'') is considered unexpired under this IFR for up to 540-days from the expiration date on the front of the EAD when combined with a Notice of Action (Form I–797C) indicating timely filing (*i.e.,* the receipt notice for the Form I–765 issued by USCIS has a receipt date that is prior to the expiration date on the EAD case and before October 30, 2025) of the renewal application based on the same employment eligibility category as stated on the facially expired EAD (or in the case of an EAD and I–797C notice that contains either an A12 or C19 category code, the category codes need not match). In those cases, the alien's facially expired EAD is considered unexpired for the up to 540-day period from the date of the EAD.[123] USCIS will update the web page on the USCIS website with the appropriate information. USCIS will also update I–9 Central on the USCIS website and the Handbook for Employers, M–274, to provide employers and employees with additional guidance.

DHS also reminds the public that the automatic extension applies to EADs; therefore, if another agency accepts unexpired EADs for any purposes (such as establishing identity or, in some situations, immigration status) then the agency should generally accept the EADs that are automatically extended under 8 CFR 274a.13(d). That is even if the EAD presented by the alien is facially expired, the EAD is automatically extended if the alien can present a Form I–797C receipt notice which indicates that the alien timely filed (*i.e.,* before the EAD expired) a renewal EAD application before October 30, 2025.

Finally, DHS also reminds aliens that under existing 8 CFR 274a.13(d), DHS retains the ability to otherwise terminate any employment authorization and/or EAD, or extension period for such employment authorization and/or EAD, by written notice to the applicant, by notice to a class of aliens published in the **Federal Register**, or as provided by statute or regulation, including 8 CFR 274a.14.

F. Severability

In issuing this IFR, it is DHS's intention that the rule's various provisions be considered severable from one another to the greatest extent possible. For instance, if a court of competent jurisdiction were to hold that ending the practice of automatically extending the validity of employment authorization and/or EADs for aliens who have timely filed an application to renew their employment authorization and/or EAD in certain employment categories may only be applied to a particular category of renewal EAD applicants or in a particular circumstance, DHS would intend for the court to leave the remainder of the rule in place with respect to all other covered persons and circumstances. DHS' overarching goal is to militate against threats to national security and public safety and to ensure that employment authorization and/or EADs are provided only after USCIS conducts adequate vetting and determines that the alien continues to be eligible and, when applicable, merits a favorable exercise of discretion.

V. Statutory and Regulatory Requirements

A. Administrative Procedure Act

DHS has issued this IFR without prior notice or public procedure because DHS is invoking the ''good cause'' exception of the APA. *See* 5 U.S.C. 553(b)(B). Furthermore, the regulatory amendment involves a foreign affairs function under 5 U.S.C. 553(a)(1). For the same reasons, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

1. Good Cause

An agency may forgo notice and comment rulemaking and a delayed effective date when the agency ''for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' *See* 5 U.S.C. 553(b)(B). Likewise, section 553(d)'s requirement of 30-day advance publication may be waived by the agency for good cause found and published with the rule. *See* 5 U.S.C. 553(d)(3).

The ''impracticable'' prong of the good cause exception excuses notice and comment in emergency situations, or where the delay caused by the APA's notice and comment procedures would result in serious harm to life, property or an immediate threat to public safety.[124] Although the good cause exception is ''narrowly construed and only reluctantly countenanced,'' [125] it is an important safety valve to be used where delay caused by notice and comment would do real harm (even absent an emergency situation).[126] An agency may find that advance notice and comment or a delayed effective date is ''impracticable'' when undertaking such procedure would impede due and timely execution of an important agency function.[127] For example, courts have explained that notice and comment rulemaking may be impracticable where, for instance, air travel security would be unable to address threats posing a ''possible imminent hazard to aircraft, persons and property within the United States;'' [128] if a rule was of life-saving importance to mine workers in the event of a mine explosion; [129] if public safety is jeopardized; [130] or in case of an urgency related to an international crisis and national security.[131] Impracticability is

[123] If an adjustment of status applicant's (C09) EAD card is combined with the advance parole authorization, *i.e.,* the applicant is issued a combo card (in this case, the EAD itself has an annotation ''SERVES AS I–512 ADVANCE PAROLE''), the up-to 540-day automatic extension under 8 CFR 274a.13(d) does not apply to the advance parole part of the applicant's combo card.

[124] *See Nat. Res. Def. Council* v. *Nat'l Highway Traffic Safety Admin,* 894 F.3d 95, 114 (2d Cir. 2018); *see Jifry* v. *FAA,* 370 F.3d 1174, 1179 (D.C. Cir. 2004) (finding good cause for the promulgation of security rules in the aftermath of 9/11 terrorist attacks); *see also Util. Solid Waste Activities Grp.* v. *EPA,* 236 F.3d 749 (D.C. Cir. 2001).

[125] *See State of New Jersey* v. *EPA,* 626 F.2d 1038, 1045 (D.C. Cir. 1980); *see also Am. Fed. Gov't Emps.* v. *Block,* 655 F.2d 1153, 1156 (D.C. Cir. 1981) (''As the legislative history of the APA makes clear, moreover, the exceptions at issue here are not 'escape clauses' that may be arbitrarily utilized at the agency's whim. Rather, use of these exceptions by administrative agencies should be limited to emergency situations . . .'').

[126] *See U.S.* v. *Dean,* 604 F.3d 1275, 1379 (11th Cir. 2010); *United States Steel Corp.* v. *United States Environmental Protection Agency,* 595 F.2d 207, 214 (5th Cir. 1979).

[127] *See, e.g., Jifry* v. *FAA,* 370 F.3d 1174, 1179–90 (D.C. Cir. 2004) (excusing APA 553 procedures for a regulation governing the suspension and revocation of airman certificates of aliens for security reasons, finding that the agency had legitimate concerns over the threat of further terrorist acts involving aircrafts, and that notice and comment would have delayed the ability of TSA and the FAA to take effective action); *see also Tri-Cty. Tel. Ass'n, Inc.* v. *FCC,* 999 F.3d 714, 719–20 (D.C. Cir. 2021) (per curiam) (sustaining a finding of good cause because the damage from hurricanes and upcoming hurricanes created an emergency sufficient to make notice and comment impracticable to issue funds).

[128] *See Jifry* v. *FAA,* 370 F.3d 1174, 1179 (D.C. Cir. 2004).

[129] *See Council of the S. Mountains, Inc.* v. *Donovan,* 653 F.2d 573, 581 (D.C. Cir. 1981).

[130] *See United States* v. *Dean,* 604 F.3d 1275 (11th Cir. 2010) (finding that the Attorney General's public safety justification was good cause for bypassing the notice and comment requirements of the Administrative Procedure Act (APA) in promulgating interim rule making the Sex Offender Registration and Notification Act (SORNA) registration retroactive to all sex offenders convicted prior to SORNA's enactment).

[131] *See Malek-Marzban* v. *Immigr. & Naturalization Serv.,* 653 F.2d 113, 116 (4th Cir. 1981) (Upholding the agency's finding that notice and comment procedures were impracticable, unnecessary, and contrary to the public interest when swift action was needed to regulate the presence of aliens in light of the urgency of the international crisis.'').

inevitably a fact-or-context dependent inquiry.[132]

The good cause exception may also apply when affording prior notice and comment would be contrary to the public interest. *See* 5 U.S.C. 553(b). This prong is met when the ordinary procedures under the APA—generally presumed to serve in the public interest—would in fact harm the interest of the public.[133] The exception is appropriately invoked when the timing and the disclosure requirement of the usual procedures would defeat the purpose of the proposal and harm the public interest.[134] This prong of the good cause exception is closely related to the impracticable prong.

For the reasons explained below, DHS believes that, based on the totality of the circumstances, it has good cause to bypass ordinary notice-and-comment procedures because following these public procedures is impracticable and moving expeditiously is in the best interest of the public. As outlined throughout this rulemaking and in accordance with the directive issued by President Trump in his Executive Orders 14159 and 14161,[135] the influx of migrants that came to the United States, in part motivated by the attractiveness of interim benefits such as employment authorization and lengthy automatic extensions, has created a significant security risk.

The automatic extension of an EAD grants the benefits of extending an alien's expired EAD and/or employment authorization merely by filing a timely renewal EAD application without an eligibility determination for the renewal, without resolving potential hits of derogatory information in connection with the aliens, and without a determination that the employment authorization should be granted in the exercise of discretion, when applicable. Aliens with derogatory information flagged during the background check process may nevertheless still obtain an automatic extension even if derogatory information cannot be reviewed and resolved, and their application denied, before the alien's EAD expires. The automatic extension therefore poses a security vulnerability that could allow bad actors to continue to work and generate income to potentially finance nefarious activities that pose an imminent threat to the American public.

The attack by an alien against peaceful demonstrators in Boulder, Colorado, highlights the critical and urgent need to act to mitigate the immediate risk posed to innocent Americans. Neither this administration nor the U.S. public have created this dire public safety emergency, and the situation is far from speculative, as the recent and grave events in Boulder, Colorado, have shown.

Thus, in accordance with President Trump's policy determinations related to foreign nationals, DHS is taking, without delay, immediate action to ensure that all aliens who are already in the United States are vetted and screened to the maximum degree possible, so that they do not receive significant benefits, such as an extension of employment authorization, without complete and proper vetting.

This rule ends the practice of providing automatic extension of EADs. An alien will not receive a renewal EAD until the alien has been thoroughly vetted in the context of the renewal application and USCIS determines that the alien remains eligible for the immigration benefit and, when applicable, continues to merit a favorable exercise of discretion. Therefore, this IFR removes a mechanism that aliens with malevolent intent can use to support criminal endeavors that pose an ongoing and imminent threat to public safety and national security. For renewals filed after the effective date of the rule aliens can no longer automatically extend, thereby preventing future use of a facially expired EAD card to obtain a driver's license or other identity documents which can give access to U.S. airways at airports, or allow them to obtain other State benefits.

If DHS were to announce the rulemaking, it is self-evident that aliens would rush to file renewal EAD applications to obtain automatic extensions before the rule takes effect. More aliens would thus obtain up to 540-day automatic extension without the proper vetting and determination by USCIS that the alien continues to be eligible and, when applicable, continues to merit a favorable exercise of discretion. Having to go through notice and comment procedures and a 30-day delayed effective date would therefore defeat the purpose of this regulation and clearly harm the public interest.

DHS believes also that engaging in the APA's notice and comment procedures and having a 30-day delayed effective date in this situation would risk severe harm and would impede the due execution of USCIS's mission to ensure aliens are appropriately vetted and screened before USCIS grants a new period of employment authorization and issues important documents such as a new EAD. If DHS had to engage in advance notice and comment procedures, it would continue to allow aliens who wish to fund nefarious activities to continue to work and generate money. And as described above, these same aliens can obtain valid identity documents which makes it easier to commit conduct detrimental to the United States. These aliens are public safety and national security risks who can use the notice and comment period to timely file a renewal and be granted an automatic extension even if no longer eligible for renewal. Therefore, a notice and comment period and a delayed effective date can result in aliens who are not only ineligible, but also a threat to the United States, obtaining an automatic extension of up to 540 days.

DHS believes immediately ending the practice of providing automatic extensions of EADs based on the filing of a renewal EAD application improves program integrity by ensuring that employment authorization is provided in a manner consistent with the laws of the United States and allows the agency to properly perform its adjudicatory function and better protect public safety and national security.

Although DHS recognizes that ending the practice of automatically extending the validity of EADs for renewal applicants may have some adverse impact on some members of the public, DHS believes that the measure is a reasonable approach to avoid the harms described in this rule immediately.[136] Measures to alleviate security risks for the U.S. public weigh heavily against the need of aliens and employers to prepare for the measures—precisely because without immediate implementation, it will lead to a flood of renewal EAD applications filed by aliens for the very purpose of obtaining the up to 540-day automatic extensions, and thus undermining public security and safety.

The American people expect the government to keep the public safe and to take timely action without undue delay, so that events such as the violence against the Jewish community in Boulder, Colorado, are prevented in

[132] *See Mid-Tex Elec. Co-op., Inc.* v. *FERC,* 822 F.2d 1123, 1132 (D.C. Cir. 1987).

[133] *See Mack Trucks, Inc.* v. *EPA,* 682 F.3d 87, 95 (D.C. Cir. 2012).

[134] *Nat. Res. Def. Council* v. *Nat'l Highway Traffic Safety Admin.,* 894 F.3d 95, 114 (2d Cir. 2018) (''Of course, since notice and comment are regarded as beneficial to the public interest, for the exception to apply, the use of notice and comment must actually harm the public interest'').

[135] *See* E.O. 14161 (Jan. 20, 2025), 90 FR 8451 (Jan. 30, 2025).

[136] As explained in Section IV.C of this preamble, DHS expects that overall EAD filing rates (initial and renewals) are likely to substantially decline, thus reducing the need for aliens to rely on an automatic extension of their EAD and/or employment authorization.

the future. For these reasons, DHS has concluded that the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3) apply to this IFR and that delaying the implementation of this rule until the conclusion of notice-and comment procedures and the delayed effective date would be impracticable and contrary to public interest.

2. Foreign Affairs

Agencies may forgo notice and comment rulemaking and a delayed effective date when the rulemaking involves a ''military or foreign affairs function of the United States.'' *See* 5 U.S.C. 553(a)(1). The Secretary of State, on February 21, 2025,[137] determined that ''all efforts, conducted by any agency of the federal government, to control the status, entry, and exit of people and the transfer of goods, services, data, technology, and any other items across the borders of the United States, constitutes a foreign affairs function of the United States under the APA, 5 U.S.C. 553.''

DHS finds that granting EADs and employment authorization, including automatic extensions under 8 CFR 274a.13(d), is directly connected to the alien's status or authorized period of stay because eligibility for employment authorization and/or documentation is dependent upon the alien's status or circumstance.[138] Because the grant of employment authorization and/or EADs is inherent to the control of an alien's status, and affects the transfer of goods, including money, across the U.S. border, it falls within the Secretary's foreign affairs determination. Eliminating the practice of providing automatic extensions based on the filing of a renewal EAD application is also part of the implementation of the President's foreign policy directives, thus further implicating a foreign affairs function.[139]

Moreover, although the text of the APA does not expressly require an agency to show that the activities related to the rulemaking may result in ''definitely undesirable international consequences,'' some courts required such a showing, and DHS can make one here.[140]

As explained throughout this preamble, the policy of issuing unvetted automatic extensions of employment authorization and/or EAD for up to 540 days, coupled with the prior administration's migration policies, has caused aliens to stream into this country and to obtain immigration benefits. It has created a migration and national security crisis as demonstrated by the recent events in Boulder, Colorado. Ending the practice of providing automatic extensions of employment authorization based on the filing of a renewal EAD application and issuing employment authorization only after having fully assessed eligibility and the alien's background in the context of the renewal application is an important piece in the administration's effort to restore safety and security for the American people and to bring DHS' practice into conformity with the President's foreign policy related to immigration.[141]

DHS also finds, consistent with the Secretary of State's determination, that ending the practice of issuing automatic extensions of EADs involves ''the transfer of goods, services, data, technology, and any other items across the borders of the United States,'' and that engaging in notice and comment procedures would result in undesirable international consequences. Aliens are only permitted to work with appropriate employment authorization. Ending the practice of providing employment authorization based on the filing of a renewal EAD application will also impact foreign remittances[142] sent abroad, to the extent such remittances include money earned through employment based on automatically extended employment authorization and/or EADs.

Embracing the potential to significantly enhance a country's Gross Domestic Product (GDP) through international remittances, the world has long recognized that governments of other countries benefit from their citizens' migration to other countries,[143] particularly migration to the United States. The United States has consistently been among the top migration destinations,[144] and top remittance-sending countries in the

[137] *See Determination: Foreign Affairs Functions of the United States,* 90 FR 12200 (Mar. 14, 2025).

[138] *See* 8 CFR 274a.12.

[139] The Secretary of State's determination references and implements numerous Presidential actions reflecting the President's top foreign policy priorities, including E.O. 14161. *See Determination: Foreign Affairs Functions of the United States,* 90 FR 12200 (Mar. 14, 2025). As noted, in E.O. 14161, the Secretary of Homeland Security, in coordination with the Attorney General and the Secretary of State, is directed to take all appropriate action to reestablish a uniform baseline for vetting and screening standards and procedures and vet and screen, to the maximum degree possible, all aliens, including aliens who are inside the United States. *See also* E.O. 14158, Section 16 (directing the Secretary, in coordination the Secretary of State and the Attorney General, to take all appropriate action, to rescind policy decisions and align activities in accordance with the order, including ensuring that employment authorization is not provided to unauthorized aliens in the United States); *see, e.g., Am. Ass'n of Exps. & Imps.-Textile & Apparel Grp.* v. *United States,* 751 F.2d 1239, 1249 (Fed. Cir. 1985) (noting that the foreign affairs exception covers agency actions ''linked intimately with the Government's overall political agenda concerning relations with another country''); *Yassini* v. *Crosland,* 618 F.2d 1356, 1361 (9th Cir. 1980) (because an immigration directive ''was implementing the President's foreign policy,'' the action ''fell within the foreign affairs function and good cause exceptions to the notice and comment requirements of the APA'').

[140] *See, e.g., Rajah* v. *Mukasey,* 544 F.3d 427, 437 (2d Cir. 2008). Other courts have held that this exemption applies when the rule in question clearly and directly involves foreign affairs functions. *See, e.g., City of New York* v. *Permanent Mission of India to the United States,* 618 F.3d 172, 202 (2d. Cir. 2010); *see also Yassini,* 618 F.2d 1356, 1360 n.4. *See id.* This is the case with this rule, which meets both standards utilized by courts as explained throughout.

[141] *See e.g., Nademi* v. *Immigr. & Naturalization Serv.,* 679 F.2d 811, 814 (10th Cir. 1982 (finding that ''[i]t was entirely rational for the Commissioner to alter immigration policy so as to bring it into conformity with the President's foreign policy toward Iran.'').

[142] Remittances are financial or in-kind transfers made by migrants to their families and communities in their countries of origin. *See* Remittances, *Worldbank.org, https://www.worldbank.org/en/topic/migration/brief/remittances-knomad* (last visited June 5, 2025). The World Bank estimates remittances, from multiple countries, sent to aliens' home countries totaled about $656 billion (that number accounts for those remittances sent to low- and middle-income countries only but are the equivalent to the Gross Domestic Product (GDP) of Belgium. *See also* World Bank, Remittances Slowed in 2023, Expected to Grow Faster in 2024, Migration and Development Brief 40, June 2024. (hereinafter ''World Bank, June 2024''), *https://documents1.worldbank.org/curated/en/099714008132436612/pdf/IDU1a9cf73b51fcad1425a1a0dd1cc8f2f3331ce.pdf* (last accessed June 6, 2025); *see also FederalReserve.gov*, FED Notes, Global Remittances Cycle (Oscar Moterroso and Diego Vilan), February 27, 2025, *https://www.federalreserve.gov/econres/notes/feds-notes/global-remittances-cycle-20250227.html* (last visited June 5, 2025).

[143] For example, in 2024, the top five recipient countries for world-wide remittances were India ($129 billion; 3.5% of the GDP), followed by Mexico ($68 billion; 3.7% of the GDP), China ($48 billion; 0.2% of the GDP), the Philippines ($40 billion; 8.7% of the GDP) and Pakistan ($33 billion; 9.4% of the GDP). *See* World Bank Blogs, Dilip Ratha, Sonia Plaza and Eung Ju Kim, ''In 2024, Remittance flows to low- and middle-income countries are expected to reach $685 billion, larger than FDI and ODA combined'' (Dec. 18, 2024), *https://blogs.worldbank.org/en/peoplemove/in-2024-remittance-flows-to-low-and-middle-income-countries-ar* (last accessed July 11, 205); *see also* World Bank Group/Data, Personal Remittances, received (% of GDP), *https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS* (last accessed July 11, 2025). In 2023, remittances from multiple countries accounted for over 20% of the GDP in countries like El Salvador, Honduras, Nepal and Lebanon. *See FederalReserve.gov*, FED Notes, Global Remittances Cycle (Oscar Moterroso and Diego Vilan), February 27, 2025, *https://www.federalreserve.gov/econres/notes/feds-notes/global-remittances-cycle-20250227.html* (last visited June 5, 2025).

[144] According to 2024 World Bank data, the United States continues to be by far among the top migration destination countries, and in March 2024, the known foreign-born population had reached 51.6 million. *See* World Bank, June 2024, Table 1.9, Top Designation Countries, and page 13.

world.[145] For example, in 2021, the United States had a total outflow of $72.7 billion (accounting for 26% of all remittances sent in 2021 worldwide),[146] $79.15 billion in 2022,[147] and $85.8 billion in 2023.[148] Foreign-born nationals represent almost 20 percent of the U.S. civilian workforce.[149] Reductions in remittances, including those stemming from changes in U.S. immigration policies, could be viewed unfavorably by other countries and lead to international consequences that other countries find undesirable, as shown, for example, by recent concerns raised by Mexico.[150] Ending the practice of providing employment authorization based on the filing of a renewal EAD application may impact aliens' ability to provide foreign remittances, which may include money earned through employment based on automatically extended employment authorization and/or EADs, and could lead to a further reduction in remittances and have associated international consequences that other countries find undesirable.

Additionally, the United States,[151] as well as other countries have long been occupied with detecting and disrupting financing of terrorist and other transnational criminal activities, including financing of such activities through remittances.[152] Remittances may pose money laundering and terrorist financing (ML/TF) risks, depending on the context of the sender and/or recipient countries as well as the scale and the characteristics of criminal activities and terrorism in these transactions.'' [153] If these risks are not mitigated effectively, ''a remittance corridor could be abused by criminals, organized crime groups, terrorists, and terrorist organizations, potentially undermining national security, social order, and economic stability on both sides of the corridor.'' [154]

Aliens who seek to support nefarious activities detrimental to the United States and its allies, such as money laundering and terrorism, could currently continue to work and generate money in the United States for up to 540 days without vetting in the context of their renewal application. Ending the practice of providing automatic extensions of employment authorization and EADs based on the filing of a renewal EAD application to enhance vetting and determine that an alien remains eligible and, when applicable, continues to merit a favorable exercise of discretion, strengthens DHS' ability to detect and deter bad actors from financing nefarious activities through remittances with money earned while automatically employment authorized.

Vetting of foreign nationals, particularly those aliens coming from regions or nations with identified security risk, as well as economic impacts on other countries on account of U.S. immigration policies, involves more cautious and sensitive consideration of those matters which could easily impact relations with other governments.[155] Having to engage in notice and comment rulemaking on such matters, including DHS's position on which country's nationals are vetted and to what extent USCIS should issue automatic extensions of EADs, may lead to the disclosure of sensitive intelligence related to the reasons why the administration is taking this step in the first place.[156]

[145] *See, e.g.,* World Bank, June 2024, page 2 (''In 2023, remittance flows to LMICs were supported by strong labor markets in the advanced economies, particularly in the United States, which stands as the largest source country for remittances and the primary destination country for migrants.''); *see* CRS (2023), Remittances: Background and Issues for the 118th Congress, Summary, *https://www.congress.gov/crs-product/R43217* (last visited June 7, 2025) (''The United States is the destination for the most international migrants and, according to the International Monetary Fund and World Bank, the largest global source of remittances, sending $72.7 billion in 2021'').

[146] *See* CRS (2023), Remittances: Background and Issues for the 118th Congress, Summary, *https://www.congress.gov/crs-product/R43217* (last visited June 7, 2025).

[147] *See* World Migration Report (2022), Chapter 2, Migration and Migrants: A Global Overview International Remittances, page 18, *https://worldmigrationreport.iom.int/what-we-do/world-migration-report-2024-chapter-2/international-remittances#:~:text=High%2Dincome%20countries%20are%20almost,data%20have%20not%20been%20updated* (last accessed June 7, 2025).

[148] *See* Migration Data Portal Remittance outflows for United States of America at *https://www.migrationdataportal.org/americas/key-figures?c=840&i=9181* (last visited June 12, 2025), *see also FederalReserve.gov*, FED Notes, Global Remittances Cycle (Oscar Moterroso and Diego Vilan), February 27, 2025, *https://www.federalreserve.gov/econres/notes/feds-notes/global-remittances-cycle-20250227.html* (last visited June 5, 2025).

[149] *See* U.S. Department of Labor (May 20, 2025), Economic News Release, Labor Force Characteristics of Foreign-born Workers, Summary, *https://www.bls.gov/news.release/forbrn.nr0.htm* (last accessed June 6, 2025). In 2024, the foreign-born labor force accounted for 19.2 percent of the U.S. civilian labor force, up from 18.6 percent in 2023. *See id.* The data presented did not yet account fully for the influx of aliens that has taken place at the border over the course of 2023 and 2024, including those paroled into the United States to seek asylum and who were given EADs.

[150] *See, e.g.,* NewsMedia Newsroom (June 7, 2025), Remittances to Mexico Collapse as Trump Cracks Down on Illegal Immigration, *https://yournews.com/2025/06/07/3490549/remittances-to-mexico-collapse-as-trump-cracks-down-on-illegal/* (last visited June 10, 2025) (''According to the Bank of Mexico, remittances in April totaled $4.76 billion—down $380 million from March's $5.14 billion. That 12.1% year-over-year decline from April 2024 marks the steepest drop in more than a decade, last matched in September 2012. Mexican President Claudia Sheinbaum addressed the downturn during a press conference, saying her administration would analyze the causes behind the continued drop and would urge U.S. lawmakers to reject a proposed 3.5% tax on remittance payments. A diplomatic delegation is set to travel to Washington to oppose the levy.''); *see also* The Latin American Post (Jan. 29, 2025), Remittances to Mexico Could Plunge, *https://latinamericanpost.com/economy-en/remittances-to-mexico-could-plunge-by-13-billion-under-trump/* (last visited June 16, 2025); *see* OFR America, How U.S. Immigration and Tax Policies Could Affect Remittance Outflows (Mar. 26, 2025), *https://orfamerica.org/orf-america-comments/us-immigration-and-tax-policies-remittance-outflows* (last visited July 11, 2025) (''One effect of the broader U.S. crackdown on both documented and undocumented migration is expected to be the decline of remittance outflows, with consequences for countries heavily reliant on these money flows.'').

[151] *See* Congressional Research Service (CRS), *Congress.gov*, Remittances: Background and Issues for the 118th Congress (updated May 10, 2023), *https://www.congress.gov/crs-product/R43217* (last accessed June 7, 2025).

[152] *See* CRS, *Congress.gov*, Remittances: Background and Issues for the 118th Congress, page 7 *https://www.congress.gov/crs-product/R43217* (last accessed June 7, 2025) (''Global standards for remittances have emerged over the past decade, largely due to concerns about unregulated money transfer services and their use in planning the September 11, 2001, terrorist attacks. International efforts have been negotiated at the Financial Action Task Force, an inter-governmental body comprising 34 countries, including the United States, and two regional organizations, that develops and promotes policies and standards to combat money laundering and terrorist financing.'').

[153] *See* World Bank, Financial Stability Board (Sept. 2021), A Draft Framework for Money Laundering/Terrorist Financing Risk Assessment of Remittance Corridor, *https://www.fsb.org/uploads/P131221-1.pdf* (last accessed June 7, 2025).

[154] *See id; see also* United Nations, Guidance for a risk-based approach for remittance services providers, *https://migrantmoney.uncdf.org/wp-content/uploads/2025/05/RBA-Guide_April2025.pdf* (last accessed June 7, 2025) (recognizing that ''[h]owever, Remittance services are potentially at risk of being misused for money laundering and financing terrorism activities. The speed with which a remittance transaction takes place means that these platforms are vulnerable to abuse by those wishing to use them for money laundering and terrorism financing'').

[155] *See, e.g., Rajah* v. *Mukasey,* 544 F.3d 427, 437 (2d Cir. 2008); *see also Am. Ass'n of Exporters & Importers* v. *United States, 751 F.2d1239, 1249 (Fed. Cir. 1985) (quoting* H. Rep. No. 1980, 69th Cong., 2d Sess. 23 (1946); S. Rep. No. 752, 69th Cong., 1st Sess. 13 (1945) (Providing that the purpose of the exemption was to allow more cautious and sensitive consideration of those matters which ''so affect relations with other Governments that, for example, public rule-making provisions would provoke definitely undesirable international consequences.'').

[156] *See, e.g., Rajah* v. *Mukasey,* 544 F.3d 427, 437 (2d Cir. 2008) (finding that having to go through notice and comment procedures would have at least three definitely undesirable international consequences that would impair relations with other countries, such as revealing intelligence when having to explain why a nation's citizen is a threat, having to resolve public debate over why some citizens of particular countries were potential dangers to U.S. security, and the fact that notice and comment rulemaking is slow and cumbersome, thus, diminishing the United States' ability to

Continued

Because this rule clearly implicates the foreign affairs policy of the United States and notice and comment procedure as well as a 30-day delayed effective date would definitely result in undesirable international consequences, DHS is issuing this rule without engaging in notice and public procedures and with an immediate effective date.

B. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14192 (Unleashing Prosperity Through Deregulation)

E.O. 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14192 (Unleashing Prosperity Through Deregulation) directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides that ''any new incremental costs associated with the new regulations shall, to the extent permitted by law be offset by the elimination of existing costs associated with at least 10 prior regulations.''

This rule has been designated a ''significant regulatory action'' and economically significant as defined under section 3(f)(1) of E.O. 12866, because its annual effects on the economy may exceed $100 million in any year of the analysis. Accordingly, this rule has been reviewed by the Office of Management and Budget.

This interim final rule is not an Executive Order 14192 regulatory action because it is being issued with respect to an immigration-related function of the United States. The rule's primary direct purpose is to implement or interpret the immigration laws of the United States (as described in INA sec. 101(a)(17), 8 U.S.C. 1101(a)(17)) or any other function performed by the U.S. Federal Government with respect to aliens. See OMB Memorandum M–25–20, ''Guidance Implementing Section 3 of Executive Order 14192, titled ''Unleashing Prosperity Through Deregulation'' (Mar. 26, 2025).

collect intelligence regarding, and enhancing defenses in anticipation of, a potential attack by foreign terrorists).

This IFR amends DHS regulations to end the practice of automatically extending the validity of employment authorization documents (Forms I–766 or EADs) for aliens who have timely filed an application to renew their EAD in certain employment authorization categories. The purpose of this change is to prioritize the proper vetting and screening of aliens before granting a new period of employment authorization and/or a new EAD. This IFR does not impact the validity of EADs that were automatically extended prior to October 30, 2025. In previous rules providing for the automatic extension of EADs based on the timely filing of a renewal EAD application, DHS attempted to stabilize aliens' earnings and avoid labor turnover costs of employers; however, the Department has shifted focus to prioritizing public safety and national security.

1. Affected Population

Due to factors contributing to a high degree of uncertainty, DHS cannot estimate the number of renewal EAD applicants who will be affected by this rule. When DHS adjudicates and approves EADs before their expiration date, this IFR results in no quantifiable impacts to aliens and their employers. DHS anticipates that due to external DHS actions for populations that may have otherwise applied for EADs, the number of initial and renewal EAD applications will be lower than in recent years.[157] For more information on these actions, see Section IV. B. of this preamble. DHS assumes this reduced workload on USCIS could potentially eliminate the EAD backlog. Accordingly, under this scenario, this IFR would be less likely to result in lapses in employment authorization. If USCIS continues to have a backlog and is unable to adjudicate renewal EAD applications before their expiration, then this IFR, by ending the practice of providing automatic extensions based on the timely filing of an EAD renewal application, would result in temporary lapses in employment authorization and/or EADs.

DHS is not able to estimate the population that would be impacted by this IFR if recent external actions do not eliminate the backlog. However, DHS describes the impacted EAD renewal population that would have been subject to automatic extensions from prior recent backlogs. As detailed earlier in the preamble,[158] DHS has previously published two temporary final rules (2022, 2024) and a final rule (2024). DHS previously estimated a population that would have lapsed in the hypothetical absence of the 2024 final rule, and the 2024 and 2022 temporary final rules. In the 2024 final rule, DHS estimated a population range of 293,000 to 449,000 pending renewal EAD applicants in the categories eligible for automatic extension would have experienced a lapse in employment and DHS assumes this is a reasonable lower bound estimate.[159] This estimate is a lower bound because of this IFR's removal of the 180 day automatic extension in addition to the 540 day extension, within the TFRs and 2024 Final Rule. Ending the practice of providing automatic extensions of employment authorization and/or EADs, whether up to 540 days or up to 180 days, could result in more EADs lapsing. If USCIS is not able to process EAD renewal applications before the associated EAD expires, a larger population could experience a temporary lapse in their employment authorization and/or EADs.

DHS received an average of approximately 52,800 additional automatic extension-eligible renewal EAD applications per month in FY 2023. These additional renewal applications added to the backlog, given that USCIS completed approximately 49,100 automatic extension-eligible renewal EAD applications per month at that time.[160]

It is difficult to accurately project future processing times. As stated in the 2024 final rule, processing times for EAD applications have fluctuated over the years. DHS cannot predict future fluctuations because they are dependent on variables that may change or are unanticipated, such as changes in application filing rates and processing

[157] As an example of the potential reduction in the number of EAD applications from external DHS actions, DHS estimated that approximately 532,000 Cubans, Haitians, Nicaraguans, and Venezuelans that were part of the Parole Processes are no longer eligible for work authorization. Many of these aliens may have applied for an EAD, but will no longer be eligible, alleviating USCIS EAD adjudication resources. (90 FR 13611, March 25, 2025).

[158] *See* Section (III)(C) Background & Purpose: Automatic Extension of Employment Authorization and Documentation.

[159] *See* Table 8 Summary of Impacts, p.101246, Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants. In the 2024, Final Rule, DHS estimated between 306,000 and 468,000 renewals EAD applicants would experience a lapse. DHS then adjusted this population based on unemployment conditions in the economy. 89 FR 101208, December 13, 2024. *https://www.federalregister.gov/d/2024-28584/p-748.*

[160] *See* 89 FR 101208 (December 13, 2024) p. 101246 footnotes 167 thru 168.

efficiencies.[161] DHS lacks data to accurately assess evolving circumstances and unknown factors that contribute to backlogs. Accordingly, given the large amount of uncertainty around these factors, DHS is unable to produce a tenable population estimate for the future population that may be affected by this IFR.

2. Impacts of Ending the Practice of Providing EAD Automatic Extensions

The purpose of this rulemaking is to prioritize the proper vetting and screening of aliens before granting a new period of employment authorization and/or a new EAD by ending the practice of automatically extending the validity of employment authorization and/or EADs for aliens who have timely filed an application to renew their EAD in certain employment authorization categories. While prior automatic extensions reduced the risk of employers employing aliens with lapsed authorizations, this IFR will also reduce the risk that affected employers will continue to employ an alien who is no longer authorized to work. For example, while within their automatic extension period, an alien's application could have been adjudicated and denied. The obligation is on the alien employee to notify his or her employer that he or she is no longer work authorized, which puts employers at risk of unknowingly employing an unauthorized alien. Absent this IFR, employers assess the applicability of the automatic extension based in part on a non-secure document (such as Form I–797C, Notice of Action, which is printed on plain paper). With this IFR ending the practice of providing automatic extensions based on the timely filing of a renewal EAD application, DHS is reducing the potential for fraud and instances where employers unknowingly employ aliens beyond their work authorization and/or EAD validity.

This rule reverses some of the impacts described in the prior automatic extension rules. Employment lapses could result in cost and transfer impacts such as lost compensation to workers, transfers between workers losing their work authorizations to replacement workers, employers' lost productivity when they are not able to quickly replace employees with lapses, and turnover costs for employers to find replacement employees. In the following section, DHS discusses prior calculations of these impacts but is not able to quantify these impacts due to uncertainty.

Based on the 2024 final rule,[162] DHS estimated that the rate of compensation for individuals ranged from $20.26 to $62.21 per hour. To estimate the earnings impacts of employment lapses, DHS would then multiply this hourly compensation rate by the employed population with lapsing EADs, average work hours per week, and the duration of lapsed employment authorizations.[163]

The employment lapse impacts could result in either transfers of compensation to other workers or costs to employers, depending on employers' ability to replace workers with lapsed EADs. In cases where, in the absence of an automatic extension period, businesses would have been able to easily find reasonable labor substitutes for the lapsing EAD, this rule results in transfers of the earnings of affected EAD holders to others, who might fill in for or replace the renewal EAD applicants during their earnings lapse. In cases where, absent the automatic extension period, businesses may not easily find reasonable labor substitutes for lapsed EADs, employers may incur lost productivity and turnover costs or other disruptions. DHS assumes the value of lost productivity is at least as high as the compensation the employer would have paid the affected EAD holder.

The employer turnover cost is generally reported as a share of annual wages.[164] DHS would calculate the turnover costs by multiplying the number of impacted lapse employees by the hourly wage rate, hours worked per year, and the share of annual wages. In the 2024 Final Rule, the unloaded hourly wage ranged from $13.97 to $42.90.[165]

Finally, if employers are unable to replace affected workers, there could be changes in transfers from taxes that would have been paid by affected aliens and their employers. It is challenging to quantify Federal and State income tax impacts of employment lapses because individual and household tax situations vary widely as do the various State income tax rates. To calculate the potential transfers impact on employment taxes, DHS would estimate the decrease in Medicare and Social Security taxes, which have a combined tax rate of 7.65 percent (6.2 percent and 1.45 percent, respectively).[166]

Finally, DHS acknowledges that an impact of this IFR is an increased risk of loss of work authorization for aliens and employers. To the extent that aliens can file their renewals earlier and DHS is able to reduce the backlog, reductions in this uncertainty are expected.

DHS is aware of the importance of employment authorization and evidence of employment authorization for applicants' and their families' livelihoods, as well as their U.S. employers' continuity of operations and financial health. DHS also is cognizant of the potential detrimental impact that gaps in employment authorization may have on an applicant's eligibility for future immigration benefits should the applicant engage in unauthorized employment during the gap,[167] and on their U.S. employers who must examine unexpired documents that evidence their employees' employment eligibility and attest that their employees are authorized to work in the United States.[168] DHS also acknowledges that backlogs and prolonged processing times for renewal EAD applications are not the fault of applicants, but nonetheless could have significant adverse consequences for applicants, their families, and their employers in the absence of this IFR. DHS will also continue to work to reduce frivolous, fraudulent or otherwise non-meritorious EAD filings to free up adjudicatory and other resources to better ensure national security and program integrity.

[161] *See* Preamble, Section III.D. for reasons the processing times and backlogs have increased resulting in the 2024 TFR and 2024 Final rules.

[162] Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants, 89 FR 101253, 101254 (Dec. 13, 2024).

[163] See 89 FR 101255 for a description of these values and calculations.

[164] In the 2024 Automatic Extension Temporary Final Rule, DHS estimated the turnover costs as a percentage of annual wages, using a mean of 23 percent (Table 11). Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants, 89 FR 24669 (April 8, 2024).

[165] See 89 FR 101253 (April 8, 2024). This wage range does not include benefits and is not the equivalent of the hourly compensation.

[166] The various employment taxes are discussed in more detail, *see* Internal Revenue Service, ''Understanding Employment Taxes,'' *https://www.irs.gov/businesses/small-businesses-self-employed/understanding-employment-taxes* (last updated May 7, 2025). *See* Internal Revenue Service ''Publication 15,'' ''(Circular E), Employer's Tax Guide'' (June 7, 2024), *https://www.irs.gov/publications/p15* for specific information on employment tax rates. Relevant calculation: (6.2 percent Social Security +1.45 percent Medicare) × 2 employee and employer losses = 15.3 percent total estimated public tax impact.

[167] With certain exceptions, if a noncitizen continues to engage in or accepts unauthorized employment, the individual may be barred from adjusting status to that of a lawful permanent resident under INA 245. See INA secs. 245(c)(2) and (8), 8 U.S.C. 1255(c)(2) and (8).

[168] *See, e.g.,* INA sec. 274A(b)(1), 8 U.S.C. 1324a(b)(1), 8 CFR 274a.2(a)(3).

C. Regulatory Flexibility Act [169]

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The RFA's regulatory flexibility analysis requirements apply only to those rules for which an agency is required to publish a general notice of proposed rulemaking pursuant to 5 U.S.C. 553 or any other law.[170] DHS did not issue a notice of proposed rulemaking for this action. Accordingly, DHS is not required to either certify that this IFR would not have a significant economic impact on a substantial number of small entities nor conduct a regulatory flexibility analysis.

Further, this interim final rule directly regulates individuals, and individuals are not defined as ''small entities'' by the Regulatory Flexibility Act. The rule indirectly impacts certain employers if, in the future, processing times exceed the expiration dates of EADs.

DHS is unsure what backlogs may continue in the future; however, DHS anticipates due to other DHS actions, described in Section IV. B. of this preamble, it is possible the backlog may end. If the backlogs are eliminated outside of this rule, employers would no longer be indirectly impacted by this final rule.

In the alternate scenario of a backlog in renewal EAD processing, some employers could experience indirect costs or transfer effects. The transfers would be in the form of lost compensation (wages and benefits). A portion of this lost compensation might be transferred from renewal EAD applicants to others who are currently in the U.S. labor force. A portion of the effects of this rule would also be borne by companies that would have continued to employ renewal EAD applicants had they been in the labor market longer; however, they were unable to find available replacement labor. These companies may incur an indirect cost, as they will be losing the productivity and potential profits the EAD applicant would have provided. Companies may also incur opportunity costs by having to choose the next best alternative to the immediate labor the applicant would have provided and by having to pay workers to work overtime hours. DHS does not know what this next best alternative may be for those companies. If companies can find reasonable labor substitutes for the positions the alien occupied, they will bear little or no costs. Conversely, if companies are unable to find reasonable labor substitutes for the position the applicant would have maintained then there would be no transfers and may experience turnover costs or other disruptions.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments.[171] Title I of UMRA provides certain exceptions to its requirements and definitions. UMRA does not apply to rules from independent regulatory agencies or rules issued with no notice of proposed rulemaking. UMRA exempts legislative provisions and rules relating to individual constitutional rights, discrimination, emergency assistance, grant accounting and auditing procedures, national security, treaty obligations, and elements of Social Security legislation.

Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which USCIS published a proposed rule, which includes any Federal mandate that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. See 2 U.S.C. 1532(a). This rule is exempt from the written statement requirement because DHS did not publish a notice of proposed rulemaking for this rule. This final rule does not contain a Federal mandate as the term is defined under UMRA.[172] Therefore, the requirements of Title II of UMRA do not apply, thus DHS has not prepared a statement under UMRA.

E. Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act)

The Congressional Review Act (CRA) was included as part of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) by subtitle E of SBREFA, Public Law 104–121, tit. II, 110 Stat. 847, 868, *et seq.* This IFR meets the criteria set forth in 5 U.S.C. 804(2) because it is likely to result in an annual effect on the economy of $100 million or more. *See* 5 U.S.C. 804(2)(A). DHS has complied with the CRA's reporting requirements and has sent this rule to Congress and to the Comptroller General as required by 5 U.S.C. 801(a)(1). As stated in this preamble, DHS has found that there is good cause to make this rule effective immediately upon publication. 5 U.S.C. 808(2).

F. Executive Order 13132 (Federalism)

This IFR will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, Federalism, 64 FR 43255 (Aug. 4, 1999), it is determined that this IFR does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This IFR is drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This IFR was written to provide a clear legal standard for affected conduct and was reviewed carefully to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal Court system. DHS has determined that this rule meets the applicable standards provided in section 3 of E.O. 12988.

H. Family Assessment

DHS has reviewed this rule in line with the requirements of section 654 of the Treasury General Appropriations Act, 1999.[173] DHS has systematically reviewed the criteria specified in section 654(c)(1), by evaluating whether this regulatory action: (1) impacts the stability or safety of the family, particularly in terms of marital

[169] Although a regulatory flexibility analysis is not required under 5 U.S.C. 601 *et seq.* when a rule is not subject to notice-and-comment rulemaking, the agency has nevertheless prepared this statement for the benefit of the public.

[170] *See* 5 U.S.C. 604(a).

[171] The term ''Federal mandate'' means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1) and 658(5) and (6).

[172] See 2 U.S.C. 1502(1), 658(6).

[173] *See* Public Law 105–277, 112 Stat. 2681 (1998).

commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) only financially impacts families, if at all, to the extent such impacts are justified; (6) may be carried out by State or local government or by the family; or (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the agency determines a regulation may negatively affect family well-being, then the agency must provide an adequate rationale for its implementation.

With this IFR, DHS is discontinuing the practice of providing an automatic extension of the EAD or employment authorization upon the filing of a renewal EAD application because it grants a benefit without an eligibility determination, without completing vetting and screening checks and without resolving the potential hits and derogatory information. DHS has determined that the implementation of this regulation may potentially negatively affect family well-being as outlined in section 654 of the Treasury General Appropriations Act, 1999. Specifically, this rule has the potential to affect disposable income of families and children and therefore, also impacts the family financially. However, DHS believes that it has an adequate rationale for its implementation. DHS believes that the consequences of the rule—the possibility that an alien is not authorized to work during the pendency of the alien's renewal EAD application and thus, that families have less disposable income—are justified in light of the national security and public safety risk that automatically issuing immigration benefits, such as an automatic extension of an EAD, poses to the public. Additionally, DHS is not removing the alien's ability to obtain a renewal of their EAD and/or employment authorization; DHS is also not preventing eligible aliens from obtaining EADs for purposes such as proof of identity. The issuance of a renewal EAD depends in large part on the applicant's timely application for a renewal EAD. The proper planning by the alien, and monitoring of EAD processing times, allows the alien to timely file a renewal EAD application as soon as eligible which may mitigate the risk that the alien could experience a lapse in their EAD validity and have to temporarily stop working. For these reasons, DHS believes that the benefit this rule provides by improving the security posture as it relates to the issuance automatic extensions outweighs the impact, if any, on families and their children. Better protecting public safety and national security before providing immigration benefits, such as automatic extensions of employment authorization based on the filing of a renewal EAD application, is paramount.

I. Executive Order 13175

This IFR will not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

J. National Environmental Policy Act

DHS and its components analyze final actions to determine whether the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* applies and, if so, what degree of analysis is required. DHS Directive 023–01, Rev. 01 ''Implementing the National Environmental Policy Act'' (Directive 023–01) and Instruction Manual 023–01–001–01 Revision 01, Implementation of the National Environmental Policy Act'' (Instruction Manual) [174] established the policies and procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA.

NEPA allows Federal agencies to establish, in their NEPA implementing procedures, categories of actions (''categorical exclusions'') that experience has shown do not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require an environmental assessment or environmental impact statement.[175] The Instruction Manual, Appendix A lists the DHS Categorical Exclusions.[176]

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.[177]

This IFR amends DHS regulations discontinuing the practice of providing an automatic extension of the EAD or employment authorization upon the filing of a renewal EAD application. DHS is ending the practice of providing automatic extension of EADs to prioritize the completion of vetting and eligibility screening of aliens before granting a new period of employment authorization and/or a new EAD.

This final rule is strictly administrative and procedural. DHS has reviewed this IFR and finds that no significant impact on the environment, or any change in environmental effect will result from the amendments being promulgated in this final rule.

Accordingly, DHS finds that the promulgation of this final rule's amendments to current regulations clearly fits within categorical exclusion A3 established in DHS's NEPA implementing procedures as an administrative change with no change in environmental effect, is not part of a larger Federal action, and does not present extraordinary circumstances that create the potential for a significant environmental effect.

K. Paperwork Reduction Act

This rule does not propose new or revisions to existing ''collection[s] of information'' as that term is defined under the paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 13200. As this IFR will only end the practice of providing automatic extension of EAD validity and/or employment authorization, USCIS does not anticipate a need to update the EAD application or to collect additional information beyond what is already collected on the EAD application.

List of Subjects in 8 CFR Part 274a

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Penalties, Reporting and recordkeeping requirements, Students.

Regulatory Amendments

Accordingly, for the reasons set forth in the preamble, the Secretary of Homeland Security amends 8 CFR part 274a as follows:

[174] The Instruction Manual contains DHS' procedures for implementing NEPA and was issued Nov. 6, 2014. *See* DHS, Office of the Chief Readiness Support Officer, National Environmental Policy Act Compliance, *https://www.dhs.gov/ocrso/eed/epb/nepa* (last updated Apr. 14, 2025).

[175] *See* 42 U.S.C. 4336(a)(2), 4336e(1).

[176] *See* Instruction Manual, Appendix A, Table 1.

[177] Instruction Manual 023–01 at V.B(2)(a)–(c).

PART 274a—CONTROLS OF EMPLOYMENT OF ALIENS

■ 1. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1105a, 1324a; 48 U.S.C. 1806; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599; Title VII of Pub. L. 110–229, 122 Stat. 754; Pub. L. 115–218, 132 Stat. 1547; 8 CFR part 2.

■ 2. Amend § 274a.13 by:
■ a. Revising the heading of paragraph (d).
■ b. Adding paragraph (e).

The revision and addition read as follows:

§ 274a.13 Application for employment authorization.

* * * * *

(d) *Renewal application filed before* October 30, 2025—* * *

(e) *Renewal application filed on or after* October 30, 2025. Except as otherwise provided by law, paragraph (d) of this section, or in an applicable **Federal Register** notice regarding procedures for renewing TPS-related employment documentation, the validity period of an expired or expiring Employment Authorization Document and, for aliens who are not employment authorized incident to status, also the attendant employment authorization, will not be automatically extended by a request for renewal. An Employment Authorization Document and, if applicable, the attendant employment authorization, will expire as follows:

(1) For aliens who are employment authorized incident to status pursuant to § 274a.12(a), unless otherwise provided by law, the Employment Authorization Document will expire on the day after the end validity date on the Employment Authorization Document. The employment authorization will expire or terminate upon the expiration or termination of the alien's status or circumstance.

(2) For aliens who are employment authorized pursuant to § 274a.12(c), the Employment Authorization Document will expire, and the attendant employment authorization will terminate, the day after the end validity date on the Employment Authorization Document, pursuant to § 274a.14, or, for TPS applicants, pursuant to section 244 of the Act and 8 CFR part 244.

Kristi Noem,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2025–19702 Filed 10–29–25; 8:45 am]

BILLING CODE 9111–97–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2025–0084; FRL–12611–02–R9]

Determination of Attainment by the Attainment Date; California; Mariposa County; 2015 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to determine that the Mariposa County nonattainment area in California (''Mariposa area'') attained the 2015 ozone national ambient air quality standards (NAAQS or ''standard'') by its August 3, 2024 attainment date. Our determination of attainment is based on complete, quality-assured, and certified ambient air quality monitoring data for calendar years 2021–2023, excluding data that showed exceedances due to exceptional events that occurred in 2021 and 2022. As a result of this action, Clean Air Act (CAA or ''Act'') section 172(c)(9) contingency measures for failure to attain the 2015 ozone NAAQS and contingency measures for failure to make reasonable further progress (RFP) are no longer required for this standard in the Mariposa area. This action fulfills the EPA's statutory obligation to determine whether the Mariposa area attained the NAAQS by the attainment date.

DATES: This rule is effective on December 1, 2025.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2025–0084. All documents in the docket are listed at *https://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Roxana Sierra-Hernández, Air Planning Section, Planning & Analysis Branch, Air & Radiation Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. By phone at (213) 244–1891, or by email at *SierraHernandez.Roxana@epa.gov.*

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

Table of Contents

I. Summary of the Proposed Action

On June 3, 2025,[1] the EPA proposed to determine that the Mariposa area, classified as ''Moderate'' for the 2015 ozone NAAQS, attained the 2015 ozone NAAQS by the August 3, 2024 attainment date. The EPA proposed this determination to fulfill our statutory obligation under CAA section 181(b)(2) to determine whether the area attained the 2015 ozone NAAQS by its attainment date. Our proposed determination was based on complete, quality-assured, and certified ambient air quality monitoring data.

In our proposed rulemaking, we provided background information on the 2015 ozone standard and the Mariposa area designation for it. In section II of our proposed determination, we explained that an area attains the 2015 ozone NAAQS when its design value (*i.e.,* the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration) does not exceed 0.070 parts per million (ppm).

In our proposed rulemaking, we analyzed the ozone monitoring data submitted to EPA's Air Quality System (AQS) database for calendar years 2021, 2022, and 2023. Ozone exceedances caused by uncontrollable wildfire emissions in 2021 and 2022 were excluded from our evaluation of whether the Mariposa area attained the 2015 ozone NAAQS by the attainment date. A summary of the resulting ozone design values for the two ozone monitoring sites in the Mariposa area are shown in Table 1.

[1] 90 FR 23501 (June 3, 2025).

TABLE 1—2015 OZONE NAAQS MONITORING DATA SUMMARY FOR THE MARIPOSA AREA [a]

AQS site ID	Monitoring site name	4th Highest daily maximum 8-hour average value (ppm)			2021–2023 design value (ppm) [a]
		2021	2022	2023	
06–043–0003	Yosemite NP-Turtleback Dome	0.077	0.067	0.068	0.070
06–043–0006	Jerseydale	0.081	0.070	0.060	0.070

[a] The data shown exclude exceedances due to exceptional events.
Source: EPA, AQS Design Value (AMP 480), Report Request ID: 2265346, February 24, 2025.

We also proposed to determine that, if this action is finalized, the CAA section 172(c)(9) requirement for states to provide contingency measures in the event the area fails to attain the NAAQS or fails to achieve RFP would no longer apply for the 2015 ozone standard for the Mariposa area.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period that ended on July 3, 2025. During this period, no comments were received.

III. Final Determination

Pursuant to section 181(b)(2)(A) of the CAA, the EPA is making a final determination that the Mariposa area attained the 2015 ozone NAAQS by the attainment date of August 3, 2024. Once effective, this final action satisfies the EPA's obligation to determine, based on an area's air quality as of the attainment date, whether the Mariposa area attained the 2015 ozone standard by its applicable attainment date.

We are also making a final determination that the CAA requirement for the state implementation plan to provide for attainment and RFP contingency measures will no longer apply to the Mariposa area for the 2015 ozone NAAQS. The Mariposa area will not be redesignated and will continue to comply with applicable requirements for a Moderate ozone nonattainment area.

IV. Statutory and Executive Order Reviews

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

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

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

Executive Order 14192 does not apply because actions that make attainment determinations under Clean Air Act section 181(b)(2) are exempted from review under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or Tribal governments, or to the private sector, will result from this action.

F. Executive Order 13132: Federalism

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

G. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the action is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a Tribe has jurisdiction, and will not impose substantial direct costs on Tribal governments or preempt Tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

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

J. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

K. Congressional Review Act

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

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 29, 2025. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time

within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting, Recordkeeping requirements, and Volatile organic compounds.

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

Dated: October 20, 2025.

Cheree D. Peterson,

Acting Regional Administrator, Region IX.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.282 is amended by adding paragraph (q) to read as follows:

§ 52.282 Control strategy and regulations: Ozone.

* * * * *

(q) *Determination of attainment by the attainment date.* Effective December 1, 2025. The EPA has determined that the Mariposa County Moderate nonattainment area in California attained the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of August 3, 2024, based upon complete, quality-assured and certified data for the calendar years 2021–2023.

[FR Doc. 2025–19714 Filed 10–29–25; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0157; FRL–13031–01–OCSPP]

ASFBIOF01-02 Polypeptide; Exemption From the Requirement of a Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of ASFBIOF01-02 polypeptide in or on all food and feed commodities if used according to the label and good agricultural practices. Under the Federal Food, Drug, and Cosmetic Act (FFDCA), Biotalys NV submitted a petition to EPA requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of this pesticide when used in accordance with the terms of the exemption.

DATES: This regulation is effective October 30, 2025. Objections and requests for hearings must be received on or before December 29, 2025, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of this document).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0157, is available at *http://www.regulations.gov.* Additional information about dockets generally, along with instructions for visiting the docket in-person, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Shannon Borges, Biopesticides and Pollution Prevention Division (7511M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1200; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What is EPA's authority for taking this action?

EPA is issuing this rulemaking under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. FFDCA section 408(c)(2)(A)(i) allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' FFDCA section 408(c)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . . '' Additionally, FFDCA section 408(b)(2)(D) requires that the Agency consider, among other things, ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. If you fail to file an objection to the final rule within the time period specified in the final rule, you will have waived the right to raise any issues resolved in the final rule. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify the docket ID number EPA–HQ–OPP–2021–0157 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before December 29, 2025.

EPA's Office of Administrative Law Judges (OALJ), in which the Hearing

Clerk is housed, urges parties to file and serve documents by electronic means only, notwithstanding any other particular requirements set forth in other procedural rules governing those proceedings. *See* ''Revised Order Urging Electronic Filing and Service,'' dated June 22, 2023, which can be found at *https://www.epa.gov/system/files/documents/2023-06/2023-06-22%20-%20revised%20order%20urging%20electronic%20filing%20and%20service.pdf.* Although EPA's regulations require submission via U.S. Mail or hand delivery, EPA intends to treat submissions filed via electronic means as properly filed submissions; therefore, EPA believes the preference for submission via electronic means will not be prejudicial. When submitting documents to the OALJ electronically, a person should utilize the OALJ e-filing system at *https://yosemite.epa.gov/oa/eab/eab-alj_upload.nsf.*

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute. If you wish to include CBI in your request, please follow the applicable instructions at *https://www.epa.gov/dockets/commenting-epa-dockets#rules* and clearly mark the information that you claim to be CBI. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice.

II. Petitioned for Exemption

In the **Federal Register** of March 22, 2021 (86 FR 15162) (FRL–10021–44), EPA issued a document pursuant to FFDCA section 408, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 1F8895) by Biotalys NV (Technologiepark 94, 9052 Ghent, Belgium, c/o SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192). The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of ASFBIOF01-02 polypeptide in or on all food commodities. That document referenced a summary of the petition prepared by the petitioner Biotalys NV, which is available in the docket.

There were no comments received in response to the notice of filing.

III. Final Tolerance Actions

A. EPA's Safety Determination

EPA evaluated the available toxicological and exposure data on ASFBIOF01–02 polypeptide (hereafter ASFBIOF01–02) and considered their validity, completeness, and reliability, as well as the relationship of this information to human risk. A full explanation of the data upon which the EPA relied and its risk assessment based on those data can be found within the document entitled ''Product Characterization and Human Health Risk Assessment for a FIFRA Section 3 Registration Request for the New Active Ingredient ASFBIOF01–02, the Manufacturing Use Product 'ASFBIOF01–02 AGROBODY biofungicide,' and the End Use Product 'EVOCA,' as well as an Associated Petition to Exempt Residues of ASFBIOF01–02 from the Requirement of a Tolerance per FFDCA Section 408'' (Human Health Risk Assessment). This document, as well as other relevant information, are available in docket number EPA–HQ–OPP–2021–0157.

Products formulated with ASFBIOF01–02 are intended for use as fungicides to control or suppress pre-harvest and post-harvest crop diseases on food and non-food crops. The active ingredient ASFBIOF01–02 is an antigen binding fragment of an antibody (*i.e.,* protein) that recognizes specific components in the fungal cell membrane. Binding of sufficient amounts of ASFBIOF01–02 to the cell membrane of the growing fungus results in the disruption of the cell integrity, leading to lysis and fungal death.

Dietary exposure to ASFBIOF01–02 may result from the consumption of treated crops, although such exposure is likely to be limited by the expected lability of the protein in the environment. The sole end-use product currently proposed for registration is a broad-spectrum sprayable fungicide proposed for the control/suppression of pre-harvest plant and post-harvest crop diseases on both food and non-food crops. ASFBIOF01–02 is a protein, which is a biological substance that is subject to the processes of biodegradation and decay through mechanisms such as photodegradation, hydrolysis, and active degradation through microbial activity in the environment. As such, ASFBIOF01–02 is not expected to accumulate in the environment but rather be converted into its amino acid constituent through the aforementioned biotic and abiotic processes. Similarly, the likelihood of ASFBIOF01–02 exposure through drinking water is expected to be low given the protein's environmental lability. Furthermore, stability in aquatic environments, including municipal water treatment plants, is not expected.

Based on a weight-of-evidence approach, considering all available hazard and exposure data for ASFBIOF01–02, the agency conducted a qualitative dietary risk assessment. Dietary risk from ASFBIOF01–02 is considered negligible for the following reasons: (1) submitted acute oral toxicity (EPA Toxicity Category IV) and subchronic oral toxicity studies demonstrate a low toxicity profile for ASFBIOF01–02; (2) the protein is readily digested in simulated gastric and intestinal fluids, indicating a low likelihood of allergenicity; (3) bioinformatic (*in silico*) analysis with the ASFBIOF01–02 amino acid sequence showed that there is a low likelihood that the antibody fragment exhibits cross-reactivity with known or putative allergens; and (4) the expected lability of the ASFBIOF01–02 protein in the environment. There are no proposed residential uses for the product formulated with ASFBIOF01–02; therefore, a residential handler and post-application exposure and risk assessment has not been conducted.

Although FFDCA section 408(b)(2)(C) provides for an additional tenfold margin of safety for infants and children in the case of threshold effects, EPA has determined that there are no such effects due to the lack of toxicity of ASFBIOF01–02. As a result, an additional margin of safety for the protection of infants and children is unnecessary.

B. Analytical Enforcement Methodology

An analytical method is not required for ASFBIOF01–02 since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Conclusion

Based upon its evaluation in the Human Health Risk Assessment, EPA concludes that use of ASFBIOF01–02 will not result in unreasonable adverse health effects to humans and that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of ASFBIOF01–02. Therefore, EPA is finalizing the tolerance exemption that was petitioned for by Biotalys NV (PP 1F8895). An exemption is established for residues of ASFBIOF01–02 in or on all food commodities.

IV. Statutory and Executive Order Reviews

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

A. Executive Order 12866: Regulatory Planning and Review

This action is exempt from review under Executive Order 12866 (58 FR 51735, October 4, 1993), because it establishes or modifies a pesticide tolerance or a tolerance exemption under FFDCA section 408 in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866.

B. Executive Order 14192: Unleashing Prosperity Through Deregulation

Executive Order 14192 (90 FR 9065, February 6, 2025) does not apply because actions that establish a tolerance under FFDCA section 408 are exempted from review under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, 44 U.S.C. 3501 *et seq.,* because it does not contain any information collection activities.

D. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA, 5 U.S.C. 601 *et seq.* The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to the APA but is subject to FFDCA section 408(d), which does not require notice and comment rulemaking to take this action in response to a petition.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more (in 1995 dollars and adjusted annually for inflation) as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

However, EPA's 2021 *Policy on Children's Health* applies to this action. This rule finalizes tolerance actions under the FFDCA, which requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue . . .'' (FFDCA 408(b)(2)(C)). The Agency's consideration is documented in the pesticide-specific review documents, located in the applicable docket at *https://www.regulations.gov.*

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

This action is not subject to Executive Order 13211 (66 FR 28355) (May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer Advancement Act (NTTAA)

This action does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and EPA will submit a rule report to each House of Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 15, 2025.

Edward Messina,

Director, Office of Pesticide Programs.

For the reasons set forth in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 180.1421 to subpart D to read as follows:

§ 180.1421 ASFBIOF01–02 polypeptide; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of ASFBIOF01–02 polypeptide in or on all food commodities when used in accordance with label directions and good agricultural practices.

[FR Doc. 2025–19712 Filed 10–29–25; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 90, No. 208
Thursday, October 30, 2025

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 4, and 30

[Docket ID OCC–2025–0142]

RIN 1557–AF34

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 302 and 364

RIN 3064–AG12

Prohibition on Use of Reputation Risk by Regulators

AGENCY: Office of the Comptroller of the Currency, Treasury, and Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are issuing a notice of proposed rulemaking to codify the elimination of reputation risk from their supervisory programs. Among other things, the proposed rule would prohibit the agencies from criticizing or taking adverse action against an institution on the basis of reputation risk. The proposed rule would also prohibit the agencies from requiring, instructing, or encouraging an institution to close an account, to refrain from providing an account, product, or service, or to modify or terminate any product or service on the basis of a person or entity's political, social, cultural, or religious views or beliefs, constitutionally protected speech, or solely on the basis of politically disfavored but lawful business activities perceived to present reputation risk.

DATES: Comments must be received on or before December 29, 2025.

ADDRESSES: Comments should be directed to the agencies as follows:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title ''Prohibition on Use of Reputation Risk by Regulators'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov:*

Go to *https://regulations.gov/.* Enter Docket ID ''OCC–2025–0142'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments, please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. EST, or email *regulationshelpdesk@gsa.gov.*

- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and Docket ID ''OCC–2025–0142'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

- *Viewing Comments Electronically—Regulations.gov:*

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The docket may be viewed after the close of the comment period in the same manner as during the comment period.

FDIC: You may submit comments to the FDIC, identified by RIN 3064–AG12, by any of the following methods:

- *Agency Website: https://www.fdic.gov/federal-register-publications.* Follow instructions for submitting comments on the FDIC's website.

- *Email: comments@FDIC.gov.* Include RIN 3064–AG12 in the subject line of the message.

- *Mail:* Jennifer M. Jones, Deputy Executive Secretary, Attention: Comments—RIN 3064–AG12, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on business days between 7 a.m. and 5 p.m.

Public Inspection: Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/federal-register-publications.* Commenters should submit only information they wish to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on

the merits of this notice will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

OCC: Jonathan Fink, Director, Bank Advisory, Joanne Phillips, Counsel, or Collin Berger, Attorney, Chief Counsel's Office, (202) 649–5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FDIC: Legal Division: Sheikha Kapoor, Assistant General Counsel, (202) 898–3960; James Watts, Counsel, (202) 898–6678.

SUPPLEMENTARY INFORMATION:

I. Background and Policy Objectives

The agencies believe that banking regulators' use of the concept of reputation risk as a basis for supervisory criticisms increases subjectivity in banking supervision without adding material value from a safety and soundness perspective. Although the agencies recognize the importance of a bank's reputation, most activities that could negatively impact an institution's reputation do so through traditional risk channels (*e.g.,* credit risk, market risk, and operational risk, among others) on which supervisors already focus and already have sufficient authority to address. At the same time, supervising for reputation risk as a standalone risk adds substantial subjectivity to bank supervision and can be abused. It also diverts bank and agency resources from more salient risks without adding material value from a safety and soundness perspective. To improve the efficiency and effectiveness of their supervisory programs, the agencies have removed reputation risk from their supervisory frameworks and are proposing to codify this change in relevant regulations. This change would also respond to concerns expressed in Executive Order 14331, Guaranteeing Fair Banking for All Americans,[1] that the use of reputation risk can be a pretext for restricting law-abiding individuals' and businesses' access to financial services on the basis of political or religious beliefs or lawful business activities.

The agencies' supervisory experience has shown that the use of reputation risk in the supervisory process does not increase the safety and soundness of supervised institutions because supervisors have little ability to predict *ex ante* whether or how certain activities or customer relationships present reputation risks that could threaten the safety and soundness of an institution.[2] In contrast, risks like credit risk and liquidity risk are more concrete and measurable and allow examiners to more objectively assess a banking institution's financial condition. Assessments of these risks may reflect perceptions of a bank's financial condition consistent with objective principles. Conversely, an independent consideration of reputation risk by examiners has not resulted in consistent or predictable assessments of material financial risk. Instead, by focusing on reputation risk, the agencies have instructed examiners to attempt to map events to public opinion and then public opinion to an institution's condition in ways that have proven nearly impossible to assess or quantify with accuracy. The agencies' attempts to identify reputation risks and their potential effects on institutions have not resulted in increased safety for supervised institutions as supervisors have not been able to accurately predict the public's reaction to business decisions made by institutions.

In other words, there is no clear evidence that interference in banks' activities or relationships in the interest of protecting the banks' reputations has protected banks from losses or improved banks' performances.

In addition to not enhancing safety and soundness, focusing on reputation risk can distract institutions and the agencies from devoting resources to managing core financial risks—such as credit risk, liquidity risk, and interest rate risk—that are quantifiable and have been shown to present significant threats to institutions. Monitoring requires dedicated resources. For example, in order to confront such risks, institutions frequently purchase expensive risk-monitoring models that must be maintained, implement detailed loan review programs, hire expensive outside advisers, and provide time-intensive training for staff. Parallel to these actions by institutions, the agencies have limited resources and a responsibility to use these resources in an efficient and productive manner in furtherance of their statutory responsibilities. In the judgment of the agencies, examining for reputation risk diverts resources that could be better spent on other risks that have been shown to present significant, tangible threats to institutions and that are more easily quantified and addressed through regulatory intervention.

Moreover, the agencies' use of reputation risk in reaching supervisory conclusions introduces subjectivity and unpredictability into the agencies' judgments. Regardless of how much the agencies refine their supervisory approaches to reflect differences among institutions, agency supervision more effectively fosters safe and sound banking when supervised institutions have a reasonable expectation of how the agencies would evaluate an activity. The agencies have not clearly explained how banks should measure the reputation risk from different activities, business partners, or clients, nor have the agencies clearly articulated the criteria for which activities, business partners, or clients are deemed to present reputation risk. Without clear standards, the agencies' supervision for reputation risk has been inconsistent and has at times reflected individual perspectives rather than data-driven conclusions. Different stakeholders may have different perspectives on how such activities or relationships impact an institution's reputation, if at all, which creates unpredictability and inconsistency for regulated entities. Additionally, the subjective nature of supervisory decisions about reputation risk introduces the potential for political or other biases into the supervisory process. Thus, supervisory judgments about reputation risk can create subjective regulatory interference in day-to-day business decisions that are better left to the judgment of the regulated institutions. Given the

[1] 90 FR 38925 (Aug. 7, 2025).

[2] In carrying out its responsibility, the OCC has refined its examination program based on more than 160 years of experience supervising financial institutions and monitoring developments in the financial industry. In the late 1980s and the 1990s, the OCC and other financial regulators shifted toward supervision frameworks that were organized by particular risks. In 1995, the OCC launched an examination program it called ''supervision by risk'' that led to the current risk-based supervision approach to examinations. In the supervision by risk program, the OCC focused on nine categories of risk: credit risk, interest rate risk, liquidity risk, price risk, foreign exchange risk, transaction risk, compliance risk, strategic risk, and reputation risk. The program later morphed into the OCC's current risk-based framework, which focuses on eight risk categories, with transaction risk renamed as operational risk and foreign exchange risk eliminated as a stand-alone risk. This risk-based supervision program focuses on evaluating risk, identifying existing and emerging problems, and ensuring that bank management takes corrective action to address problems before a bank's safety and soundness is compromised. Similarly, as regulators shifted toward risk-based supervision in the 1990s, the FDIC added references to reputation risk to manuals and guidance, and supervisors cited reputation risk in formal and informal enforcement actions in subsequent years. Generally, the FDIC's supervision framework has evaluated a variety of risks, such as liquidity risk, interest rate risk, operational risk, and reputational risk.

difficulty of measuring reputation risk in an accurate and precise way, it is inappropriate for the agencies' supervisors to examine supervised institutions against this risk.

More importantly, when a supervised institution alters its behavior to comply with supervisory expectations relating to reputation risk management, such as by closing an account or choosing not to enter into or continue a business relationship with a customer that it would otherwise maintain, it is forgoing an opportunity to maintain or build a profitable business relationship that may otherwise be consistent with sound risk management practice. Accordingly, the agencies' past practice of encouraging supervised institutions to alter their behavior due to reputation risk may have adversely impacted institutions' earnings, capital positions, and safety and soundness. In this way, the agencies' prior focus on reputation risk may have caused supervised institutions to be less safe and sound than had they been permitted to engage in lawful business activities without these limitations resulting from supervisory expectations surrounding reputation risk.

In addition, examining for reputation risk can result in agency examiners implicitly or explicitly encouraging institutions to restrict access to banking services on the basis of examiners' personal views of a group's or individual's political, social, cultural, or religious views or beliefs, constitutionally protected speech, or politically disfavored but lawful business activities. This can result in unfair treatment of different groups and impermissible restrictions on a group's or individual's ability to access financial services. This practice can also result in distortions to industries and the U.S. economy, as the agencies' examiners use reputation risk to choose winners and losers among market participants and industries.

Moreover, even if reputation risk could be quantified, the agencies lack evidence that reputation risk, in the absence of identified financial or operational risks, is a factor that can hurt an institution's safety and soundness. While there are examples of risks like credit risk and liquidity risk being the primary driver of an institution's unsafe or unsound condition, the agencies have not seen evidence that reputation risk can be the primary driver of an institution being in unsafe or unsound condition. When reputational issues are identified as a root cause of harm that has impacted a supervised institution's financial condition, there are typically other more significant factors, such as those relating to the institution's capital, asset quality, liquidity, earnings, or interest rate sensitivity, that are the primary drivers of the institution's weakened financial condition. The OCC's supervision is required by law to focus on the safety and soundness of its institutions and compliance with laws and regulations as well as, as applicable, fair access to financial services and fair treatment of customers.[3] The FDIC is responsible for the supervision and examination of state nonmember banks, including for safety and soundness principles.[4] In furtherance of these objectives, the agencies' supervision should focus on concrete risks and objective criteria directly related to applicable statutory requirements. In the agencies' experience, using reputation risk in its supervisory process does not further this mission.

II. Description of the Proposed Rule and Changes

Based on the above-described supervisory experience and the ineffectiveness of using reputation risk to improve the safety and soundness of supervised institutions, the agencies have removed reputation risk from their supervisory frameworks and are proposing to codify this change in relevant regulations. This proposed rule would be a regulation as defined in section 5 of Executive Order 14192. The proposed rule would be a significant regulatory action for the purposes of Executive Order 12866. The proposed elimination of reputation risk supervision is deregulatory.

Under 12 U.S.C. 1(a), the OCC is charged with assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions and other persons subject to its jurisdiction. Similarly, the FDIC has statutory authority to administer the affairs of the Corporation, which includes a framework for banking supervision.[5] Further, the FDIC's Board of Directors has the authority to prescribe rules and regulations as it may deem necessary to carry out the provisions of the Federal Deposit Insurance Act,[6] and the OCC is authorized to prescribe rules and regulations to carry out the responsibilities of the office.[7]

Based on these authorities, the subjectivity of reputation risk, the inefficacy of reputational risk at identifying risks to safety and soundness or other statutory mandates, and the potential for regulatory overreach and abuse, the agencies have removed reputation risk from their supervisory frameworks and are proposing regulations to codify this change in relevant regulations. The proposed rule would not alter or affect the ability of an institution to make business decisions regarding its customers or third-party arrangements and to manage them effectively, consistent with safety and soundness and compliance with applicable laws.

The proposed rule would prohibit the agencies from criticizing, formally or informally, or taking adverse action against an institution on the basis of reputation risk. In addition, under the proposal, the agencies would be prohibited from requiring, instructing, or encouraging an institution or its employees to refrain from contracting with or to terminate or modify a contract with a third party, including an institution-affiliated party, on the basis of reputation risk. The agencies also could not require, instruct, or encourage an institution or its employees to refrain from doing business with or to terminate or modify a business relationship with a third party, including an institution-affiliated party, on the basis of reputation risk. The proposed rule would also prevent the agencies from requiring, instructing, or encouraging an institution to enter into a contract or business relationship with a third party on the basis of reputation risk. The proposed rule would further prohibit the agencies from requiring, instructing, or encouraging an institution or an employee of an institution to terminate a contract with, discontinue doing business with, or modify the terms under which it will do business with a person or entity on the basis of the person's or entity's political, social, cultural, or religious views or beliefs, constitutionally protected speech, or solely on the basis of the third party's involvement in politically disfavored but lawful business activities perceived to present reputation risk.

This prohibition would not affect requirements intended to prohibit or reject transactions or accounts associated with Office of Foreign Assets Control-sanctioned persons, entities, or jurisdictions. Such prohibitions and rejections would not be based specifically on ''the person's or entity's political, social, cultural, or religious views or beliefs, constitutionally protected speech, or politically

[3] 12 U.S.C. 1.

[4] *See* 12 U.S.C. 1811 *et seq.* The FDIC also insures the deposits of insured depository institutions and manages receiverships of failed depository institutions.

[5] *See* 12 U.S.C. 1819(a), 1820(a).

[6] 12 U.S.C. 1819(a)(Tenth), 1820(g).

[7] 12 U.S.C. 93a.

disfavored but lawful business activities perceived to present reputation risk.'' The prohibition also does not affect the agencies' authority to enforce the requirements of the provisions of United States Code title 31, chapter 53, subchapter II regarding reporting on monetary transactions.[8] However, due to the broad nature of Bank Secrecy Act (BSA)[9] and anti-money laundering (AML) supervision, there is a risk that BSA/AML focused supervisory actions could indirectly address reputation risk. The proposal would prohibit supervisors from using BSA and anti-money laundering concerns as a pretext for reputation risk. In addition, although the agencies would continue to consider the statutory factors required with respect to certain applications,[10] the proposal would prohibit supervisors from using these provisions as a pretext for reputation risk, as described in this proposal, in making determinations regarding such applications.

''Adverse action,'' as defined by the proposed rule, would include the provision of negative feedback, including feedback in a report of examination, a memorandum of understanding, verbal feedback, or an enforcement action. Furthermore, ''action'' encompasses any action of any agency employee, including any communication characterized as informal, preliminary, or not approved by agency officials or senior staff. A downgrade (or contribution to a downgrade) of any supervisory rating, including a rating assigned under the Uniform Financial Institutions Rating System or comparable rating system, also would constitute an ''adverse action'' under the proposed rule. In addition, a downgrade (or contribution to a downgrade) of a rating under the Uniform Interagency Consumer Compliance Rating System or the Uniform Rating System for Information Technology, or any other rating system, would also constitute an ''adverse action'' under the proposed rule. Further, a denial of a filing or licensing application or an imposition of a capital requirement above the minimum ratios would constitute an ''adverse action'' under the proposed rule, as would any burdensome requirements placed on an approval, the introduction of additional approval requirements, or any other heightened requirements on an activity or change.

The agencies are also including a general ''catch-all'' for any other actions that could negatively impact the institution outside of traditional supervisory channels. This catch-all is meant to include actions such as supervisory decisions on applications for waivers outside of the normal licensing or filing channels, applications to engage in certain business activities for which supervisory permission is required, or other regulatory decisions affecting institutions. Intent is the defining characteristic for whether an agency-action would fall into this catch-all provision. As an illustration of agency actions that would be subject to this prohibition, the prohibition would prevent the agencies from, for example: disapproving a proposed member of a board of directors on the basis of an unsubstantiated pretense where the true reason is reputation risk, denying a waiver of bank director citizenship and residency requirements for the purpose of inducing a bank to address perceived reputation risk somewhere in the bank's operations, or disapproving a change of control notice because a bank lacks internal reputation risk controls. Agency actions subject to this prohibition would also include negative feedback that is verbal, a condition attached to an approval, the introduction of new approval requirements, and any other heightened requirements that are intended to force the bank to address perceived reputation risk.

The term ''doing business with'' in the proposed rule is intended to be construed broadly and to include business relationships both with bank clients and with third-party service providers. It is also intended to include the relationship of a bank with organizations or individuals that the bank is providing with charitable services, including as part of a community benefits agreement or as part of a Community Reinvestment Act plan. This term is intended to include both existing business relationships and prospective business relations.

The term ''institution-affiliated party'' has the same meaning as in section 3 of the Federal Deposit Insurance Act.[11]

The proposed rule would define ''reputation risk'' as the risk, regardless of how the risk is labeled by the institution or by the agencies, that an action or activity, or combination of actions or activities, or lack of actions or activities, of an institution could negatively impact public perception of the institution for reasons unrelated to the current or future financial condition of the institution. This definition is intended to include not just risks that the agencies or the institution identify as ''reputation risks,'' but any similar risk based around concerns regarding the public's perception of the institution beyond the scope of other risks in the agencies' supervisory frameworks. This definition is not intended to capture risks posed by public perceptions of the institution's current or future financial condition because such perceptions relate to risks other than reputation risk. For example, public perceptions that a bank has insufficient liquidity and therefore is susceptible to a bank run would not be considered reputation risk.

The prohibitions of the proposed rule would apply to actions taken on the basis of reputation risk; political, social, cultural, or religious views and beliefs; constitutionally protected speech; or solely based on bias against politically disfavored but lawful business activities perceived to present reputation risk. The proposed rule would not prohibit criticism, supervisory feedback, or other actions to address traditional risk channels related to safety and soundness and compliance with applicable laws, including credit risk, market risk, and operational risk (including cybersecurity, information security, and illicit finance), provided that such criticism, supervisory feedback or other actions addressing these other risks is not a pretext by examiners aimed at reputation risk.

Under the proposed rule, the OCC would make seven conforming amendments to the OCC's regulations to eliminate references to reputation risk. These conforming amendments would be made in (1) the list of risks a national bank shall consider, as appropriate, as set out in 12 CFR part 1 of the OCC regulations; [12] and (2) the safety and soundness standards set forth in 12 CFR part 30 of the OCC regulations, including the OCC guidelines.[13] The

[8] 15 U.S.C. 5311 *et seq.*

[9] *Id.*

[10] *See, e.g.,* 12 U.S.C. 1816 (requiring the FDIC to consider, among other things, the ''general character and fitness of the management of the depository institution'' in an application for deposit insurance); 12 U.S.C. 1817(j)(2)(B) (requiring the agencies to ''conduct an investigation of the competence, experience, integrity, and financial ability of each person named'' as a proposed acquirer of an institution following a notice of a proposed change in control of a depository institution).

[11] Public Law 81–797, 64 Stat. 873 (codified at 12 U.S.C. 1813(u)).

[12] 12 CFR 1.5(a). The OCC added reputation risk between the proposal and finalization of the regulation. *See* 60 FR 66157, 66161 (Dec. 21, 1995); 61 FR 63980, 63985 (Dec. 2, 1996).

[13] 12 CFR part 30, appendices B, C, D, and E. The OCC and other agencies jointly issued supplement A to appendix B pursuant to 15 U.S.C. 6801 and then-existing guidance. 70 FR 15737 (Mar. 29, 2005). Fifteen U.S.C. 6801(b) requires each relevant agency to establish appropriate standards, but it does not require joint issuances or references to reputation risk. The OCC issued appendix C pursuant to 12 U.S.C. 1831p–1, which allows the

OCC regulations at 12 CFR part 30 would include six conforming amendments.[14]

Regulations codified in 12 CFR part 41 of the OCC regulations and 12 CFR part 334 of the FDIC's regulations refer to reputation risk concerning certain identity theft prevention programs required by the Fair and Accurate Credit Transactions Act of 2003.[15] However, by statute, guidelines and regulations for these programs must occur jointly across certain federal agencies,[16] so no conforming amendment is suggested for 12 CFR part 41 or 12 CFR part 334. The OCC and FDIC are considering making changes to 12 CFR parts 41 and 334, respectively, in a separate, joint rulemaking in the future. Until that separate, joint rulemaking occurs, the agencies expect to exercise their discretion in enforcing 12 CFR parts 41 and 334 by using agency resources to assess compliance without regard to reputation risk.

Under the proposed rule, the FDIC would make one conforming amendment to the FDIC's regulations relating to reputation risk. This amendment would be made in the safety and soundness standards set forth in 12 CFR part 364 of the FDIC's regulations.[17] The proposed rule would eliminate the reference to reputation risk in the regulation.

III. Request for Comments and Use of Plain Language

The agencies seek comment on all aspects of the proposed rule, including the following:

1. Do commenters believe the enumerated prohibitions capture the types of actions that add undue subjectivity to bank supervision? If there are other prohibitions that would be warranted, please identify such prohibitions and explain.

2. Is the definition of ''adverse action'' in the proposed rule sufficiently clear? Should the definition be broader or narrower? Are there other types of agency actions that should be included in the list of ''adverse actions?'' Does the catch-all provision at the end of the definition of ''adverse action'' appropriately capture any agency action that is intended to punish or discourage banks on the basis of perceived reputation risk? Is such catch-all provision sufficiently clear?

3. Are commenters aware of any other uses of reputation risk in supervision or in the agencies' regulations that should be addressed in this rule? If so, please describe such uses and their effects on institutions.

4. Do commenters believe the definition of ''reputation risk'' should be broadened or narrowed? If so, how should the definition be broadened or narrowed? Please provide the reasoning to support any suggested changes.

5. Do commenters understand what is meant by the phrase ''solely on the basis of the third party's involvement in lawful business activities that are perceived to present reputation risk?'' Could the agencies word this prohibition more clearly? Should the word ''solely'' be included? Would it be better to say ''solely or partially?''

6. Are there alternatives to the proposed rule that would better achieve the agencies' objective? If so, please describe any such alternatives.

7. Are there changes to the proposed rule that would help restrict the agencies' ability to evade the rule's requirements, including evasion through mislabeling a risk or through using alternative adverse actions? Is there other anti-evasion language that should be included?

8. The proposed definition of ''reputation risk'' includes risks that could negatively impact public perception of an institution for reasons unrelated to the financial condition of the institution. Should this be broadened to include reasons unrelated to the financial or operational condition of the institution?

9. Should the list of relationships that would constitute ''doing business with'' include additional types of relationships?

10. Does the removal of reputation risk create any other unintended consequences for the agencies or their supervised institutions?

11. Would the proposed rule have any costs, benefits, or other effects that the agencies have not identified? If so, please describe any such costs, benefits, or other effects.

Additionally, section 722 of the Gramm-Leach-Bliley Act[18] requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The agencies have sought to present the proposed rule in a simple and straightforward manner, and invite comment on the use of plain language. For example:

12. Have the agencies organized the material to suit your needs? If not, how could the agencies present the proposed rule more clearly?

13. Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?

14. Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?

15. Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?

16. Would more, but shorter, sections be better? If so, which sections should be changed?

What other changes can the agencies incorporate to make the regulation easier to understand?

IV. Expected Effects

OCC:

A. Background

As previously discussed, to improve the efficiency and effectiveness of their supervisory programs, the agencies are proposing revising their supervisory frameworks to remove reputation risk. The proposed rule would prohibit the OCC from criticizing or taking adverse actions (broadly defined) against an institution on the basis of reputation risk. The proposed rule would define ''reputation risk'' as the risk, regardless of how the risk is labeled by the institution or by the agencies, that an action or activity, or combination of actions or activities, or lack of actions or activities, of an institution could negatively impact public perception of the institution for reasons unrelated to the financial condition of the institution. The proposed rule would also prohibit the agencies from requiring, instructing, or encouraging an institution or any employee of an institution to terminate a contract with, discontinue doing business with, sign a contract with, initiate doing business with, modify the terms under which it will do business with a person or entity,

prescription of several types of standards but does not refer to reputation risk. *See* 70 FR 6329 (Feb. 7, 2005); 12 U.S.C. 1831p–1. Appendix C includes three references to reputation risk. The OCC issued appendices D and E pursuant to 12 U.S.C. 1831p–1 in furtherance of the goals of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, 124 Stat. 1376. 79 FR 54518 (Sept. 11, 2014); 81 FR 66792 (Sept. 29, 2016).

[14] The proposal would not change 12 CFR 3.101(b) where a definition excludes reputation risk.

[15] Public Law 108–159, 117 Stat. 1952 (codified at 15 U.S.C. 1681–1681x); *see* 12 CFR 41.90(b)(3)(ii); *see also* 12 CFR 334.90(b)(3)(ii).

[16] *See* 15 U.S.C. 1681m(e); 72 FR 63720 (Nov. 9, 2007) (discussing the definition that refers to reputation risk and linking it to 15 U.S.C. 1681m(e)).

[17] 12 CFR part 364.

[18] Public Law 106–102, sec. 722, 113 Stat. 1338, 1471 (1999); 12 U.S.C. 4809.

or take any action or refrain from taking any action on the basis of the person's or entity's political, social, cultural, or religious views or beliefs or solely on the basis of the person's or entity's involvement in lawful business activities perceived to present reputational risk. The proposed rule would not prohibit criticism, supervisory feedback, or other actions to address traditional risk channels related to safety and soundness and compliance with applicable laws, including credit risk, market risk, and operational risk (including cybersecurity, information security, and illicit finance), provided that such criticism, supervisory feedback or other actions addressing these other risks is not a pretext by examiners aimed at reputational risk.

Under the proposed rule, the OCC would make seven conforming amendments to the OCC's regulations relating to reputation risk. These conforming amendments would be made in (1) the list of risks a national bank shall consider, as appropriate, as set out in 12 CFR part 1 of the OCC regulations; and (2) the safety and soundness standards set forth in 12 CFR part 30 of the OCC regulations.

B. Current Legal and Regulatory Baselines

There are two regulatory baselines that may be assessed. Under the first baseline, on March 20, 2025, the OCC issued OCC Bulletin 2025–4 wherein the OCC issued guidance that removed references to banks' reputation risk from its ''Comptroller's Handbook'' booklets and guidance issuances. In addition, the OCC instructed its examiners that they should no longer examine for reputation risk.

Therefore, under this first legal and regulatory baseline, the OCC already discontinued reputation risk-based supervision since March 2025, and the proposed rule would create a formal legal mandate to remove reputation risk from OCC supervision. Effectively, there would be no additional burden, and therefore no compliance costs since reputation risk would not be examined effective with OCC Bulletin 2025–4. Any cost savings would be *de minimis* since references to bank's reputation risk were already removed, per OCC Bulletin 2025–4.

Under the second baseline, which considers the scenario absent OCC Bulletin 2025–4, however, the OCC would have continued to supervise institutions for reputation risk.

C. Parties Affected by the Proposal

1. OCC-Regulated Entities Affected by the Rule

The OCC currently supervises 1,017 national banks, Federal savings associations, trust companies and Federal branches and agencies of foreign banks (collectively, banks).[19] Because all OCC-regulated banks and institutions were subject to reputation risk assessments, the proposed rule would affect all 1,017 institutions supervised.

2. Other Parties

Because the proposed rule aims to remove the influence of the agencies' reputation risk assessments on institutions' customer relationships, we conclude that the proposed rule could potentially affect all OCC-regulated institutions' current and future customers.

D. Costs and Benefits

1. Cost Savings From Decreased Regulatory Compliance Burden

While the proposed rule does not address regulated institutions' internal practices of how to address reputation risk, the OCC expects that the proposed rule would, nonetheless, result in a decrease in regulated institutions' costs primarily through reduced regulatory compliance burden, relative to the second baseline. The OCC would no longer examine for reputation risk nor issue any related adverse supervisory actions. In turn, institutions would no longer have to engage in reputation risk examinations and respond to any related adverse supervisory actions. The OCC estimates that the cost savings could be significant depending on the level of effort an institution put forth to prepare for reputation risk examinations. Although the OCC is unable to thoroughly quantify cost savings due to decreased regulatory compliance burden, the OCC notes that there is a non-trivial percentage of Matters Requiring Attention (MRAs) that mentioned ''reputation risk.'' The table below calculates the percentage of MRA-related text summaries that mentioned the word ''reputation'' from all available summaries. The table[20] shows that 12.42 percent of MRAs mentioned ''reputation risk'' in 2024. While many of these MRAs were not solely due to reputation risk, given the persistence and increased occurrence of reputation risk in MRAs, one could expect that removing reputation risk would result in significant cost savings for institutions that had to respond to reputation risk-related MRAs.

Year	Without reputation	With reputation	Total
2017	95.66	4.34	100
2018	90.06	9.94	100
2019	91.16	8.84	100
2020	90.06	9.94	100
2021	87.23	12.77	100
2022	88.63	11.37	100
2023	88.87	11.13	100
2024	87.58	12.42	100

2. Benefits From Increased Business Opportunities

The impact of the proposed rule on OCC-regulated institutions depends significantly on the extent to which the OCC may have changed regulated institutions' behavior in response to the OCC's expectation in managing reputation risk, relative to the second baseline. On the one hand, the OCC's expectations in managing reputation risk may not have been binding; regulated institutions may internally perceive reputation risk as an important aspect in maintaining or growing their customer base.

On the other hand, the OCC's expectations in managing reputation risk may have caused changes in institutions' behavior in response to reputation risk concerns by encouraging institutions to refrain from and/or

[19] Based on OCC internal Financial Institution Data Retrieval System (FINDRS) with data as of August 1, 2025.

[20] We measure the compliance burden by calculating the percentage of recent MRAs that mentioned reputation risk prior to the release of OCC Bulletin 2025–4.

terminate existing customer relationships. A consequence of the OCC's actions could have been preventing banks from entering into or continuing profitable business relationships with law-abiding customers that banks would have maintained in the absence of OCC expectations. Indeed, in 2016 the House passed the Financial Institution Customer Protection Act,[21] which was meant to address alleged abuses by Federal banking regulators that pressured financial institutions to terminate services for legal businesses based solely on ''reputational risk.''

While Sachdeva et al.[22] show that targeted banks decreased lending to and terminated relationships with affected firms that were deemed controversial, results suggest that the firms substituted credit through nontargeted banks under similar terms. As such, targeted credit rationing did not substantially change the performance of the affected firms. However, even though it did not substantially affect the performance of the affected firms, the affected firms nonetheless had to incur search costs and burden in finding alternatives.

We conclude that the proposed rule should benefit customers by formally eliminating reputation risk related regulatory restrictions and constraints on their business relationships because the proposed rule would decrease the search costs and burden associated with finding alternatives. Additionally, we conclude that the proposed rule should benefit regulated institutions by eliminating constraints on relationships related to reputation risk that would otherwise be profitable.

3. Benefits From Less Subjective Supervision

One additional benefit from the removal of reputation risk is greater consistency and objectivity of supervisory decisions, relative to the second baseline. This in turn, would increase the predictability for regulated institutions to understand and manage regulators' supervisory expectations.

In our analysis, we attempted to quantitatively compare the subjectivity of OCC supervisory text that mentions or does not mention the word ''reputation.'' In our analysis, we use standard natural language processing algorithms [23] to calculate a subjectivity score for individual OCC supervisory texts. The supervisory text includes descriptions of significant supervisory events and MRA text descriptions that we also utilized in section D.1 of this document. We calculate the subjectivity score for each individual text document, and the scores range from 0 to 1 and scores closer to 1 are indicative of more subjective text.

For the significant supervisory event text data, we calculated an average subjectivity score of 0.41 for text that mentions reputation and an average score of 0.28 for supervisory event text that does not mention reputation. For the MRA text data, we calculated average subjectivity scores of 0.43 and 0.33 from text that mentions and does not mention reputation, respectively.

FDIC:

This analysis utilizes all regulations and guidance applicable to FDIC-supervised insured depository institutions (IDIs), as well as information on the financial condition of IDIs as of the quarter ending March 31, 2025, as the baseline to which the effects of the proposed rule are estimated.

If adopted, the proposed regulations would indirectly benefit FDIC-supervised IDIs or associated persons to the extent they would have been the subject of an adverse action or prohibition against certain business relationships by the agencies on the basis of reputation risk; political, social, cultural, or religious views and beliefs; constitutionally protected speech; or politically disfavored but lawful business activities perceived to present reputation risk. This benefit would occur as the IDI or associated person would avoid any costs associated with such adverse actions or prohibitions. Additionally, the improved efficiency and effectiveness of the FDIC's supervisory programs may also indirectly benefit covered IDIs. Further, IDIs may incur some voluntary costs associated with making changes to their compliance policies and procedures. As of the quarter ending March 31, 2025, the FDIC supervised 2,835 IDIs.[24] The FDIC does not have the information necessary to quantify number of instances, or the associated costs, where an IDI or person was subject to a covered adverse action or prohibition against certain business relationships. Nor does the FDIC have the information necessary to quantify the number of IDIs that might make changes to their compliance policies and procedures. However, the FDIC believes that such instances are very infrequent, based on their supervisory experience. The FDIC believes that the aggregate economic effect of any such indirect benefits or costs is unlikely to be substantive.

The FDIC invites comments on all aspects of this analysis. In particular, would the proposed rule have any costs or benefits that the agencies have not identified?

V. Regulatory Analysis

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 [25] (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies have reviewed this proposed rule and determined that it does not create any information collection or revise any existing collection of information. Accordingly, no PRA submissions to OMB will be made with respect to this proposed rule.

Regulatory Flexibility Act

OCC:

In general, the Regulatory Flexibility Act (RFA) [26] requires an agency, in connection with a proposed rule, to prepare an initial regulatory flexibility analysis describing the impact of the rule on small entities (defined by the U.S. Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of $850 million or less and trust companies with total assets of $47 million or less). However, under section 605(b) of the RFA, this analysis is not required if an agency certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** along with its proposed rule.

The OCC currently supervises approximately 609 small entities, all of which may be impacted by the proposed rule.[27] In general, the OCC classifies the

[21] The bill never became law because it was not passed in the Senate.

[22] *See* Kunal Sachdeva et al., *Defunding Controversial Industries: Can Targeted Credit Rationing Choke Firms?,* 172 J. Fin. Econ. 104133 (2025).

[23] Specifically, we used the Python TextBlob package, which calculates a subjectivity score based on the text provided.

[24] Call Report data, March 31, 2025.

[25] 44 U.S.C. 3501–3521.

[26] 5 U.S.C. 601 *et seq.*

[27] We base our estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $850 million and $47 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify an OCC-

Continued

economic impact on an individual small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense. Furthermore, the OCC considers 5 percent or more of OCC-supervised small entities to be a substantial number. Thus, at present, 30 OCC-supervised small entities would constitute a substantial number.

Under the baseline with OCC Bulletin 2025–4, the proposed rule would have a *de minimis* effect on small entities. Under the baseline absent OCC Bulletin 2025–4, the proposed rule would affect all small OCC-regulated entities and would therefore affect a significant number of small entities. However, because the proposed rule would result in significant cost savings for all OCC-regulated institutions, the OCC expects the proposed rule would not have a significant adverse impact on small entities. Thus, the OCC finds that the proposed rule would not have a significant economic impact on a substantial number of OCC-supervised small entities under either baseline.

FDIC:

The RFA generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[28] However, an initial regulatory flexibility analysis is not required if the agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. The SBA has defined ''small entities'' to include banking organizations with total assets of less than or equal to $850 million.[29] Generally, the FDIC considers a significant economic impact to be a quantified effect in excess of 5 percent of total annual salaries and benefits or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of one or more of these thresholds typically represent significant economic impacts for FDIC-supervised institutions. As discussed further below, the FDIC certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of FDIC-supervised small entities.

The proposed rule would, if adopted, apply only to the activities of the FDIC. As such, this rule would not impose any obligations on FDIC-supervised entities, and FDIC-supervised entities would not need to take any action in response to this rule. Therefore, the FDIC certifies that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of FDIC-supervised small entities because proposed rule would not have any direct effect on the public or FDIC-supervised institutions.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section. The FDIC is particularly interested in comments on any significant effects on small entities that the agency has not identified.

Unfunded Mandates Reform Act

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[30] Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year ($187 million as adjusted annually for inflation). Pursuant to section 202 of the UMRA,[31] if a proposed rule meets this UMRA threshold, the OCC would need to prepare a written statement that includes, among other things, a cost-benefit analysis of the proposal.

The OCC estimates that the proposal would not require additional expenditure from OCC-regulated entities. As noted earlier, there would likely be a decrease in expenditures due to the removal of compliance mandates, resulting in cost savings. The OCC's estimated UMRA cost is $0. Therefore, the OCC finds that the proposed rule does not trigger the UMRA cost threshold. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA) of 1994,[32] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC and FDIC must consider, consistent with principles of safety and soundness and the public interest (1) any administrative burdens that the final rule would place on depository institutions, including small depository institutions and customers of depository institutions and (2) the benefits of the final rule. This rulemaking would not impose any reporting, disclosure, or other requirements on insured depository institutions. Therefore, section 302(a) does not apply to this final rule.

Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023 [33] requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website *www.regulations.gov*.

The OCC and FDIC propose codifying the elimination of the use of reputation risk from their risk-based supervisory frameworks. The proposal would prohibit the agencies from forcing an institution to refrain from contracting or doing business with an individual or entity or to terminate, modify, or initiate a contract or business relationship on the basis of reputation risk. The agencies also could not force an institution to terminate a contract or discontinue or modify a business relationship on the basis of an individual's or entity's political, social, cultural, or religious views or beliefs, constitutionally protected speech, or lawful business activities.

The proposal and required summary can be found for the OCC at *https://www.regulations.gov* by searching for Docket ID OCC–2025–0142 and *https://occ.gov/topics/laws-and-regulations/occ-regulations/proposed-issuances/index-proposed-issuances.html,* and for the FDIC at *https://www.fdic.gov/resources/regulations/federal-register-publications/index.html#.*

supervised institution as a small entity. We use December 31, 2024, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See footnote 8 of the SBA's *Table of Size Standards.*

[28] 5 U.S.C. 601 *et seq.*

[29] The SBA defines a small banking organization as having $850 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by 87 FR 69118, effective December 19, 2022). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses an IDI's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the insured depository institution is ''small'' for the purposes of the RFA.

[30] 2 U.S.C. 1531 *et seq.*

[31] 2 U.S.C. 1532.

[32] 12 U.S.C. 4802(a).

[33] 5 U.S.C. 553(b)(4).

Executive Order 12866 (as Amended)

Executive Order 12866, titled ''Regulatory Planning and Review,'' as amended, requires the Office of Information and Regulatory Affairs (OIRA), OMB, to determine whether a proposed rule is a ''significant regulatory action'' prior to the disclosure of the proposed rule to the public. If OIRA finds the proposed rule to be a ''significant regulatory action,'' Executive Order 12866 requires the OCC to conduct a cost-benefit analysis of the proposed rule and for OIRA to conduct a review of the proposed rule prior to publication in the **Federal Register**. Executive Order 12866 defines a ''significant regulatory action'' to mean a regulatory action that is likely to (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

OIRA has determined that this proposed rule is a significant regulatory action under section 3(f)(1) of Executive Order 12866 and, therefore, is subject to review under Executive Order 12866. The OCC's analysis conducted in connection with Executive Order 12866 is included above under the ''Expected Impacts'' section of this document. The FDIC's analysis conducted in connection with Executive Order 12866 is also included above under the ''Expected Effects'' section of this document.

Executive Order 14192

Executive Order 14192, titled ''Unleashing Prosperity Through Deregulation,'' requires that an agency, unless prohibited by law, identify at least 10 existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation with total costs greater than zero. Executive Order 14192 further requires that new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations. Under either baselines with OCC Bulletin 2025–4 or absent the OCC Bulletin 2025–4, this proposed rule is a deregulatory action under Executive Order 14192 because it results in potential cost savings for OCC-supervised institutions.

List of Subjects

12 CFR Part 1

Banks, Banking, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 4

Administrative practice and procedure, Freedom of information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

12 CFR Part 30

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements.

12 CFR Part 302

Administrative practice and procedure, Banks, Banking.

12 CFR Part 364

Banks, Banking, Information.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend parts 1, 4, and 30 of chapter I of title 12 of the *Code of Federal Regulations* as follows:

PART 1—INVESTMENT SECURITIES

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

Authority: 12 U.S.C. 1 *et seq.,* 24 (Seventh), and 93a.

§ 1.5 [Amended]

■ 2. In § 1.5, amend paragraph (a) by removing the phrase ''compliance, strategic, and reputation risks'' and adding in its place the phrase ''compliance, and strategic risks''.

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

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

Authority: 5 U.S.C. 301, 552; 12 U.S.C. 1, 93a, 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464 1817(a), 1818, 1820, 1821, 1831m, 1831p–1, 1831o, 1833e, 1867, 1951 *et seq.,* 2601 *et seq.,* 2801 *et seq.,* 2901 *et seq.,* 3101 *et seq.,* 3401 *et seq.,* 5321, 5412, 5414; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510; E.O. 12600 (3 CFR, 1987 Comp., p. 235).

■ 4. Add subpart G, consisting of § 4.91, to read as follows:

Subpart G—Enforcement and Supervision Standards

Sec.
4.91 Prohibition on use of reputation risk.

Subpart G—Enforcement and Supervision Standards

§ 4.91 Prohibition on use of reputation risk.

(a) The OCC will not criticize, formally or informally, or take adverse action against an institution on the basis of reputation risk.

(b) The OCC will not require, instruct, or encourage an institution, or any employee of an institution, to:

(1) Refrain from contracting or doing business with a third party, including an institution-affiliated party, on the basis of reputation risk;

(2) Terminate a contract or discontinue doing business with a third party, including an institution-affiliated party, on the basis of reputation risk;

(3) Sign a contract or initiate doing business with a third-party, including an institution-affiliated party, on the basis of reputation risk; or

(4) Modify the terms or conditions under which it contracts or does business with a third party, including an institution-affiliated party, on the basis of reputation risk.

(c) The OCC will not require, instruct, or encourage an institution, or any employee of an institution, to terminate a contract with, discontinue doing business with, sign a contract with, initiate doing business with, modify the terms under which it will do business with a person or entity, or take any action or refrain from taking any action on the basis of the person's or entity's political, social, cultural, or religious views or beliefs, constitutionally protected speech, or solely on the basis of the person's or entity's involvement in politically disfavored but lawful business activities perceived to present reputation risk.

(d) The prohibitions in paragraphs (a) through (c) of this section only apply to actions taken on the bases described in paragraphs (a) through (c) of this section, and the prohibition in

paragraph (c) of this section shall not apply with respect to persons, entities, or jurisdictions sanctioned by the Office of Foreign Assets Control.

(e) Nothing in this section shall restrict the OCC's authority to implement, administer, and enforce the provisions of subchapter II of chapter 53 of title 31, United States Code.

(f) The OCC will not take any supervisory action or other adverse action against an institution, a group of institutions, or the institution-affiliated parties of any institution that is designed to punish or discourage an individual or group from engaging in any lawful political, social, cultural, or religious activities, constitutionally protected speech, or, for political reasons, lawful business activities that the supervisor disagrees with or disfavors.

(g) The following definitions apply in this section:

Adverse action includes:

(i) Any negative feedback delivered by or on behalf of the OCC to the supervised institution, including in a report of examination or a formal or informal enforcement action;

(ii) A downgrade, or contribution to a downgrade, of any supervisory rating, including, but not limited to:

(A) Any rating under the Uniform Financial Institutions Rating System (or any comparable rating system);

(B) Any rating under the Uniform Interagency Consumer Compliance Rating System;

(C) Any rating under the Uniform Rating System for Information Technology; and

(D) Any rating under any other rating system;

(iii) A denial of a licensing application;

(iv) Inclusion of a condition on any licensing application or other approval;

(v) Imposition of additional approval requirements;

(vi) Any other heightened requirements on an activity or change;

(vii) Any adjustment of the institution's capital requirement; and

(viii) Any action that negatively impacts the institution, or an institution-affiliated party, or treats the institution differently than similarly situated peers.

Doing business with means:

(i) The bank providing any product or service, including account services;

(ii) The bank contracting with a third party for the third party to provide a product or service;

(iii) The bank providing discounted or free products or services to customers or third parties, including charitable activities;

(iv) The bank entering into, maintaining, modifying, or terminating an employment relationship; or

(v) Any other similar business activity that involves a bank client or a third party.

Institution means an entity for which the OCC makes or will make supervisory or licensing determinations either solely or jointly.

Institution-affiliated party means the same as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(u)).

Reputation risk means any risk, regardless of how the risk is labeled by the institution or regulators, that an action or activity, or combination of actions or activities, or lack of actions or activities, of an institution could negatively impact public perception of the institution for reasons not clearly and directly related to the financial condition of the institution.

PART 30—SAFETY AND SOUNDNESS STANDARDS

■ 5. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 1, 93a, 371, 1462a, 1463, 1464, 1467a, 1818, 1828, 1831p–1, 1881–1884, 3102(b) and 5412(b)(2)(B); 15 U.S.C. 1681s, 1681w, 6801, and 6805(b)(1).

Appendix B, Supplement A [Amended]

■ 6. Amend appendix B to part 30, supplement A, section III, Customer Notice, by removing ''Timely notification of customers is important to manage an institution's reputation risk. Effective'' and adding in its place ''Timely and effective''.

Appendix C to Part 30 [Amended]

■ 7. Amend appendix C to part 30 by:

■ a. In section I, Introduction, paragraph (i), removing '' reputation,'';

■ b. In section I, Introduction, paragraph (vi), removing the sentence ''For example, national banks and Federal savings associations should exercise appropriate diligence to minimize potential reputation risks when they undertake to act as trustees in mortgage securitizations.''; and

■ c. In section II, Standards for Residential Mortgage Lending Practices, paragraph II(B)(1), removing '' reputation,''.

Appendix D to Part 30 [Amended]

■ 8. Amend appendix D to part 30, subsection II, Standards for Risk Governance Framework, paragraph (B), by removing the phrase ''compliance risk, strategic risk, and reputation risk'' and adding in its place the phrase ''compliance risk, and strategic risk''.

Appendix E to Part 30 [Amended]

■ 9. Amend appendix E to part 30, section II, Recovery Plan, paragraph (B)(4)(b) by removing '', including reputational impact''.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, the FDIC proposes to amend parts 302 and 364 of chapter III of title 12 of the *Code of Federal Regulations* as follows:

PART 302—REGULATIONS GOVERNING BANK SUPERVISION

■ 10. The authority citation for part 302 continues to read as follows:

Authority: 5 U.S.C. 552, 12 U.S.C. 1818, 1819(a) (Seventh and Tenth), 1831p–1.

■ 11. Revise the heading for part 302 as set forth above.

■ 12. Add a heading for subpart A, consisting of §§ 302.1, 302.2, and 302.3, to read as follows:

Subpart A—Use of Supervisory Guidance

■ 13. Add subpart B, consisting of § 302.100, to read as follows:

Subpart B—Prohibition on Use of Reputation Risk by Regulators

Sec.
302.100 Prohibitions.

Subpart B—Prohibition on Use of Reputation Risk by Regulators

§ 302.100 Prohibitions.

(a) The FDIC will not criticize, formally or informally, or take adverse action against an institution on the basis of reputation risk.

(b) The FDIC will not require, instruct, or encourage an institution, or any employee of an institution, to:

(1) Refrain from contracting or doing business with a third party, including an institution-affiliated party, on the basis of reputation risk;

(2) Terminate a contract or discontinue doing business with a third party, including an institution-affiliated party, on the basis of reputation risk;

(3) Sign a contract or initiate doing business with a third-party, including an institution-affiliated party, on the basis of reputation risk; or

(4) Modify the terms or conditions under which it contracts or does business with a third party, including an institution-affiliated party, on the basis of reputation risk.

(c) The FDIC will not require, instruct, or encourage an institution, or any employee of an institution, to terminate a contract with, discontinue doing business with, sign a contract with, initiate doing business with, modify the terms under which it will do business with a person or entity, or take any action or refrain from taking any action on the basis of the person's or entity's political, social, cultural, or religious views or beliefs, constitutionally protected speech, or solely on the basis of the person's or entity's involvement in politically disfavored but lawful business activities perceived to present reputation risk.

(d) The prohibitions in paragraphs (a) through (c) of this section only apply to actions taken on the bases described in paragraphs (a) through (c) of this section, and the prohibition in paragraph (c) of this section shall not apply with respect to persons, entities, or jurisdictions sanctioned by the Office of Foreign Assets Control.

(e) Nothing in this section shall restrict the FDIC's authority to implement, administer, and enforce the provisions of subchapter II of chapter 53 of title 31, United States Code.

(f) The FDIC will not take any supervisory action or other adverse action against an institution, a group of institutions, or the institution-affiliated parties of any institution that is designed to punish or discourage an individual or group from engaging in any lawful political, social, cultural, or religious activities, constitutionally protected speech, or, for political reasons, lawful business activities that the supervisor disagrees with or disfavors.

(g) The following definitions apply in this section:

Adverse action includes:

(i) Any negative feedback delivered by or on behalf of the FDIC to the supervised institution, including in a report of examination or a formal or informal enforcement action;

(ii) A downgrade, or contribution to a downgrade, of any supervisory rating, including, but not limited to:

(A) Any rating under the Uniform Financial Institutions Rating System (or any comparable rating system);

(B) Any rating under the Uniform Interagency Consumer Compliance Rating System;

(C) Any rating under the Uniform Rating System for Information Technology;

(D) Any rating under any other rating system;

(iii) A denial of a filing pursuant to 12 CFR part 303 of the FDIC's regulations;

(iv) Inclusion of a condition on a deposit insurance application or other approval;

(v) Imposition of additional approval requirements;

(vi) Any other heightened requirements on an activity or change;

(vii) Any adjustment of the institution's capital requirement; and

(viii) Any action that negatively impacts the institution, or an institution-affiliated party, or treats the institution differently than similarly situated peers.

Doing business with means:

(i) The bank providing any product or service, including account services;

(ii) The bank contracting with a third party for the third party to provide a product or service;

(iii) The bank providing discounted or free products or services to customers or third parties, including charitable activities;

(iv) The bank entering into, maintaining, modifying, or terminating an employment relationship; or

(v) Any other similar business activity that involves a bank client or a third party.

Institution means an entity for which the FDIC makes or will make supervisory determinations or other decisions, either solely or jointly.

Institution-affiliated party means the same as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(u)).

Reputation risk means any risk, regardless of how the risk is labeled by the institution or regulators, that an action or activity, or combination of actions or activities, or lack of actions or activities, of an institution could negatively impact public perception of the institution for reasons not clearly and directly related to the financial condition of the institution.

PART 364—STANDARDS FOR SAFETY AND SOUNDNESS

■ 14. The authority citation for part 364 continues to read as follows:

Authority: 12 U.S.C. 1818 and 1819(a)(Tenth), 1831p–1; 15 U.S.C. 1681b, 1681s, 1681w, 6801(b), 6805(b)(1).

Appendix B to Part 364 [Amended]

■ 15. Amend appendix B to part 364, supplement A, section III, Customer Notice, by removing ''Timely notification of customers is important to manage an institution's reputation risk. Effective'' and adding in its place ''Timely and effective''.

Jonathan V. Gould,

Comptroller of the Currency. Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on October 7, 2025.

Jennifer M. Jones,

Deputy Executive Secretary.

[FR Doc. 2025–19715 Filed 10–29–25; 8:45 am]

BILLING CODE 4810–33–6714–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 4

[Docket ID OCC–2025–0174]

RIN 1557–AF35

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 305

RIN 3064–AG16

Unsafe or Unsound Practices, Matters Requiring Attention

AGENCY: Office of the Comptroller of the Currency, Treasury, and the Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) propose to define the term ''unsafe or unsound practice'' for purposes of section 8 of the Federal Deposit Insurance Act and to revise the supervisory framework for the issuance of matters requiring attention and other supervisory communications.

DATES: Comments must be received on or before December 29, 2025.

ADDRESSES: Comments should be directed to the agencies as follows:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title ''Unsafe or Unsound Practices, Matters Requiring Attention'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

• *Federal eRulemaking Portal—Regulations.gov:*

Go to *https://regulations.gov/.* Enter Docket ID ''OCC–2025–0174'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on

the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments, please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* site, please call 1–866–498–2945 (toll free) Monday–Friday, 9 a.m.–5 p.m. EST, or email *regulationshelpdesk@gsa.gov.*

• *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

• *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and Docket ID ''OCC–2025–0174'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

• *Viewing Comments Electronically—Regulations.gov:*

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• *Email: comments@FDIC.gov.* Include RIN 3064–AG16 in the subject line of the message.

• *Mail:* Jennifer M. Jones, Deputy Executive Secretary, Attention: Comments—RIN 3064–AG16, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

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FOR FURTHER INFORMATION CONTACT:

OCC: Eden Gray, Assistant Director, Allison Hester-Haddad, Special Counsel, Marjorie Dieter, Counsel, Harry Naftalowitz, Attorney, Chief Counsel's Office, 202–649–5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FDIC: Division of Risk Management Supervision: Brittany Audia, Chief, Exam Support Section, (703) 254–0801, *baudia@fdic.gov;* Legal Division, Seth P. Rosebrock, Assistant General Counsel, (202) 898–6609, *srosebrock@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The OCC and the FDIC (collectively, the agencies) exercise their enforcement and supervision authority to ensure that supervised institutions [1] refrain from engaging in unsafe or unsound practices. To that effect, the agencies believe it is important to promote greater clarity and certainty regarding certain enforcement and supervision standards by defining them by regulation. Moreover, the agencies believe it is critical that examiners and institutions prioritize material financial risks over concerns related to policies, process, documentation, and other nonfinancial risks and that their enforcement and supervision standards further that prioritization.

Specifically, pursuant to the provisions of section 8 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1818), the agencies are authorized to take enforcement actions against depository institutions [2] and institution-affiliated parties [3] that have engaged in an ''unsafe or unsound practice.'' As described in section II.A of this **SUPPLEMENTARY INFORMATION**, the agencies are proposing to define by regulation the term ''unsafe or unsound practice'' for purposes of section 8 of the FDI Act. The proposed implementation of the definition of ''unsafe or unsound practice'' would apply to the agencies' supervisory and enforcement activities prospectively only. Moreover, it would not apply to the agencies' rulemaking activities or authority.

In addition, the agencies are proposing to establish uniform standards for purposes of their communication of certain supervisory concerns. The agencies each communicate deficiencies that rise to the level of a matter that requires attention from an institution's board of directors and management, but the agencies have different standards for when the agency may communicate these deficiencies.[4] As described in

[1] For purposes of this **SUPPLEMENTARY INFORMATION**, the term ''institution'' refers to insured depository institutions and any other institutions subject to supervision or enforcement by the agencies. The scope of the proposed rule is discussed below.

[2] A depository institution generally refers to an insured depository institution as defined in 12 U.S.C. 1813(c)(2); any national banking association chartered by the OCC, including an uninsured association; or a branch or agency of a foreign bank. Refer to specific provisions of 12 U.S.C. 1818 regarding their applicability to a specific institution. *See* 12 U.S.C. 1818(b)(4)–(5).

[3] *See id.* 1813(u).

[4] Specifically, as discussed in more detail below, the OCC has procedures for the communication of matters requiring attention (MRAs). The FDIC communicates matters requiring board attention (MRBAs).

section II.B of this **SUPPLEMENTARY INFORMATION**, the agencies are proposing to establish uniform standards for when and how the agencies may communicate matters requiring attention (MRAs) as part of the supervision and examination process, consistent with their underlying statutory authorities. The proposal also clarifies that the agencies may communicate other nonbinding suggestions to institutions orally or in writing to enhance an institution's policies, practices, condition, or operations as long as the communication is not, and is not treated by the agency in a manner similar to, an MRA.

II. Description of the Proposed Rule

A. Unsafe or Unsound Practices

Based on the agencies' supervisory experience and as a matter of policy, the agencies propose implementing a definition of ''unsafe or unsound practice'' for purposes of section 8 of the FDI Act that would focus on material risks to the financial condition of an institution and would generally require that an imprudent practice, act, or failure to act, if continued, would be likely to materially harm the institution's financial condition. Taking into account statutory text, legislative history, and case law, the agencies believe that the proposed regulatory definition fits within the authority Congress granted to the agencies to take enforcement actions based on unsafe or unsound practices under section 8 of the FDI Act.[5] The agencies believe this change will provide greater consistency for institutions and institution-affiliated parties and appropriately focus supervisory and institution resources on the most critical financial risks to institutions and the financial system.

The term ''unsafe or unsound practice'' appears in section 8 of the FDI Act for purposes of the agencies' enforcement authority. The statute does not define the term unsafe or unsound practice. An unsafe or unsound practice may serve as a ground for several types of enforcement actions under provisions of section 8 of the FDI Act. These include involuntary termination of deposit insurance by the FDIC,[6] a cease-and-desist order,[7] a temporary cease-and-desist order,[8] the removal and prohibition of an institution-affiliated party,[9] or a Tier 2 or Tier 3 civil money penalty.[10] Most enforcement provisions in section 8 of the FDI Act also include other potential grounds, such as a violation of law or a breach of fiduciary duty, which are not affected by the proposed regulatory definition.

The ordinary meaning of the term ''unsafe,'' as defined by the dictionaries most commonly used at the time section 8 of the FDI Act was enacted, is a sufficient degree of risk of sufficient harm, injury, or damage to make a situation not safe.[11] They defined the term ''unsound'' as a sufficient degree of actual harm, injury, or damage to make a thing not sound.[12]

In determining what may be considered an unsafe or unsound practice under section 8 of the FDI Act, some courts have looked to a standard articulated by John Horne, then Chairman of the Federal Home Loan Bank Board (FHLBB) (Horne Standard), during congressional hearings related to the Financial Institutions Supervisory Act of 1966 (Act of 1966), which is the source of the agencies cease-and-desist authority in section 8(b) of the FDI Act.[13] Specifically, Chairman Horne stated:

> Generally speaking, an ''unsafe or unsound practice'' embraces any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk or loss or damage to an institution, its shareholders, or the agencies administering the insurance funds.[14]

Representative Patman further described the authority added in the Act of 1966 as ''aimed specifically at actions impairing the safety or soundness of . . . insured financial institutions'' and providing the agencies with ''flexible tools [that] relate strictly to the insurance risk and to assure the public . . . sound banking facilities.'' [15]

Courts reviewing cases brought by the agencies have grappled with the meaning of ''unsafe or unsound practice'' in section 8 of the FDI Act and have reached different conclusions as to how to apply it. For example, some courts have applied the Horne Standard without further elaboration on what the standard entails.[16] Other courts have

[5] *See Groos Nat'l Bank* v. *OCC,* 573 F.2d 889, 897 (5th Cir. 1978) (''The phrase 'unsafe or unsound banking practice' is widely used in the regulatory statutes and in case law, and one of the purposes of the banking acts is clearly to commit the progressive definition and eradication of such practices to the expertise of the appropriate regulatory agencies.'').

[6] 12 U.S.C. 1818(a)(2)–(3) (''If the [FDIC] Board of Directors determines that an insured depository institution or the directors or trustees of an insured depository institution have engaged or are engaging in unsafe or unsound practices in conducting the business of the depository institution . . . the [FDIC] Board of Directors may issue an order terminating the insured status of such depository institution effective as of a date subsequent to such finding.'').

[7] *Id.* 1818(b)(1) (''If, in the opinion of the appropriate Federal banking agency, any insured depository institution, depository institution which has insured deposits, or any institution-affiliated party is engaging or has engaged, or the agency has reasonable cause to believe that the depository institution or any institution-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of such depository institution . . . the agency may issue and serve upon the depository institution or the institution-affiliated party an order to cease and desist from any such . . . practice.'').

[8] *Id.* 1818(c)(1) (''Whenever the appropriate Federal banking agency shall determine that . . . the unsafe or unsound practice or practices . . . or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the depository institution, or is likely to weaken the condition of the depository institution or otherwise prejudice the interests of its depositors prior to the completion of the proceedings conducted pursuant to paragraph (1) of subsection (b) of this section, the agency may issue a temporary order requiring the depository institution or such party to cease and desist from any such . . . practice and to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings.'').

[9] *Id.* 1818(e) (Subject to additional requirements, ''[w]henever the appropriate Federal banking agency determines that any institution-affiliated party has, directly or indirectly . . . engaged or participated in any unsafe or unsound practice in connection with any insured depository institution or business institution . . . the appropriate Federal banking agency may suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the depository institution . . . .'').

[10] *Id.* 1818(i) (''[A]ny insured depository institution which, and any institution-affiliated party who . . . recklessly engages in an unsafe or unsound practice in conducting the affairs of such insured depository institution . . . which practice is part of a pattern of misconduct; causes or is likely to cause more than a minimal loss to such depository institution; or results in pecuniary gain or other benefit to such party, shall forfeit and pay a civil penalty of not more than $25,000 for each day during which such . . . practice . . . continues . . . . [A]ny insured depository institution which, and any institution-affiliated party who knowingly . . . engages in any unsafe or unsound practice in conducting the affairs of such depository institution; . . . and knowingly or recklessly causes a substantial loss to such depository institution or a substantial pecuniary gain or other benefit to such party by reason of such . . . practice . . . shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under subparagraph (D) for each day during which such . . . practice . . . continues.'').

[11] *See, e.g.,* 16 J.A. Simpson & E.S.C. Weiner, Oxford English Dictionary 355–66 (2d ed. 1989) (safe); 19 *id.* at 180 (unsafe).

[12] *See, e.g.,* 16 *id.* at 50–52 (sound); 19 *id.* at 206 (unsound).

[13] *See, e.g., Gulf Fed. Sav. & Loan Assoc. of Jefferson Parish* v. *Fed. Home Loan Bank Bd.,* 651 F.2d 259, 264 (5th Cir. 1981) (''The authoritative definition of an unsafe or unsound practice, adopted in both Houses, was a memorandum submitted by John Horne''). Chairman Horne's articulation of what constitutes an unsafe or unsound practice was read into the record in both chambers of Congress. *See* 112 Cong. Rec. 25008, 26474 (1966) (remarks of Rep. Thomas W.L. Ashley and Sen. Absalom W. Robertson).

[14] 112 Cong. Rec. 26474.

[15] *Id.* at 24984 (remarks of Rep. Wright Patman).

[16] *See, e.g., Greene Cnty. Bank* v. *FDIC,* 92 F.3d 633, 636 (8th Cir. 1996) (quoting *First Nat'l Bank of Eden, S.D.* v. *Dep't of Treas., OCC,* 568 F.2d 610,

Continued

explained that section 8 of the FDI Act applies to practices that have a ''reasonably direct effect on an [institution]'s financial soundness'' [17] or ''threaten the financial integrity'' of the institution.[18] Other courts have required that unsafe or unsound practices cause ''abnormal risk to the financial stability of the . . . institution,'' [19] ''abnormal risk of financial loss or damage,'' [20] or ''reasonably foreseeable undue risk.'' [21]

The lack of a Federal statutory definition for the term ''unsafe or unsound practice'' has resulted in enforcement actions and supervisory criticisms for concerns not related to material financial risks. The agencies believe that the proposed regulatory definition faithfully reflects the intent of the standard as enacted by Congress and aligns with the interpretations of the term unsafe or unsound practice within section 8 of the FDI Act by most Federal courts. The proposed regulatory definition would also provide a consistent nationwide standard to provide greater clarity for institutions and institution-affiliated parties.

The agencies believe that the proposed definition of the term unsafe or unsound practice is also important to appropriately focus institution and examiner attention on practices that are likely to materially harm an institution's financial condition, providing the institution's board of directors and management additional flexibility to enact day-to-day decisions based on their business judgment and risk tolerance. The proposed definition reflects the agencies' judgment and experience that their supervisory resources are best focused on practices that are likely to materially harm an institution's financial condition, such as risks that are more likely than other risks to lead to material financial losses, bank failures, and instability in the banking system.[22] For the same reasons, the agencies believe that practices that are likely to materially harm the financial condition of an institution are critical for an institution's board of directors and management to address.

In addition, lack of clarity regarding the scope of the term unsafe or unsound practice among examiners could lead to inconsistent application of the terms in communicating supervisory findings.[23] The proposed definition of an unsafe or unsound practice should ensure consistency in identifying practices as unsafe or unsound only where they are likely to materially harm the financial condition of an institution, are likely to present a material risk of loss to the Deposit Insurance Fund (DIF), or have materially harmed the financial condition of the institution. This definition should focus institution and examiner attention on core financial risks facing an institution and otherwise provide the institution's board of directors and management the flexibility to enact decisions based on their business judgment and risk tolerance.

Therefore, as explained further below, in the proposed rule, the agencies would define the term unsafe or unsound practice to mean a practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that (1) is contrary to generally accepted standards of prudent operation; and (2)(i) if continued, is likely to (A) materially harm the financial condition of the institution; or (B) present a material risk of loss to the DIF; or (ii) materially harmed the financial condition of the institution.

Imprudent act. Consistent with the Horne Standard, a practice, act, or failure to act under the proposed definition would have to be contrary to generally accepted standards of prudent operation to be considered an unsafe or unsound practice.[24] The agencies acknowledge that an essential role of institutions is to identify, measure, incur, and manage risk. The agencies do not intend to take enforcement actions under section 8 of the FDI Act for prudent operations that result in risk-taking. A practice, act, or failure to act could only be considered an unsafe or unsound practice if it deviates from generally accepted standards of prudent operation (and otherwise meets the proposed definition).

Likely. To qualify as an unsafe or unsound practice under the proposed definition, it also would have to be likely—as opposed to, for example, merely possible—that the practice, act, or failure to act, if continued, would materially harm the financial condition of the institution or present a material risk of loss to the DIF. The agencies believe that including the term ''if continued'' is important to allow for identification of an unsafe or unsound act or failure to act before it impacts an institution's financial condition. However, the conduct must be sufficiently proximate to a material harm to an institution's financial condition to meet the proposed definition.[25] The agencies do not intend to identify unsafe or unsound acts or failures to act by extrapolating from deficient conduct that could potentially result in, alone or in combination with other factors or events, material harm to the financial condition of an institution but is not likely to do so. Moreover, the agencies considered, but did not propose, more precisely defining the requisite likelihood under the proposed definition, such as through a minimum percentage (*e.g.,* 10%, 51%). Instead, the agencies invite comment on whether a minimum percentage likelihood or more precise definition of ''likely'' is appropriate.

Financial condition. An unsafe or unsound practice would include a practice, act, or failure to act that, if continued, is likely to materially harm the financial condition of an institution. The agencies believe that harm to financial condition includes practices, acts, or failures to act that are likely to directly, clearly and predictably impact an institution's capital, asset quality, earnings, liquidity, or sensitivity to market risk.

611 n.2 (8th Cir. 1978)); *Doolittle* v. *NCUA,* 992 F.2d 1531, 1538 (11th Cir. 1993) (quoting *Nw. Nat'l Bank, Fayetteville, Ark.* v. *Dep't of Treas.,* 917 F.2d 1111, 1115 (8th Cir. 1990)) (construing the term unsafe or unsound practice as applied to a credit union).

[17] *Gulf Fed. Sav. & Loan Assoc. of Jefferson Parish.,* 651 F.2d at 264.

[18] *Johnson* v. *OTS,* 81 F.3d 195, 204 (D.C. Cir. 1996) (quoting *Gulf Fed. Sav. & Loan Assoc. of Jefferson Parish.,* 651 F.2d at 267).

[19] *In re Seidman,* 37 F.3d 911, 928 (3d Cir. 1994); *see also id.* at 932 (stating that ''[a]n unsafe or unsound practice has two components: (1) an imprudent act (2) that places an abnormal risk of financial loss or damage on a banking institution'').

[20] *Michael* v. *FDIC,* 687 F.3d 337, 352 (7th Cir. 2012) (citing *In re Seidman,* 37 F.3d at 932).

[21] *Blanton* v. *OCC,* 909 F.3d 1162, 1172 (D.C. Cir. 2018) (quoting *Landry* v. *FDIC,* 204 F.3d 1125, 1138 (D.C. Cir. 2000)).

[22] In March 2023, several insured depository institutions with total consolidated assets of $100 billion or more, including Silicon Valley Bank, experienced significant withdrawals of uninsured deposits in response to underlying material weaknesses in their financial position and failed. The agencies believe these failures highlight the need for the agencies to allocate supervisory resources with a focus on material financial risks.

[23] In addition to enforcement actions under section 8 of the FDI Act, the agencies identify unsafe or unsound practices as supervisory findings in other communications, including reports of examination, supervisory letters, MRAs, and informal enforcement actions. These identified unsafe or unsound practices sometimes establish a record for a later enforcement action under section 8 of the FDI Act. The agencies' identification of an unsafe or unsound practice is distinct from standards for safety and soundness that the agencies are required to issue pursuant to 12 U.S.C. 1831p–1. *See* 12 CFR parts 30, 364.

[24] *See, e.g., Michael,* 687 F.3d at 352 (citing *Van Dyke* v. *FRB,* 876 F.2d 1377, 1380 (8th Cir. 1989)); *Frontier State Bank Okla. City, Okla.* v. *FDIC,* 702 F.3d 588, 604 (10th Cir. 2012) (citing *Simpson* v. *OTS,* 29 F.3d 1418, 1425 (9th Cir. 1994)); *De la Fuente* v. *FDIC,* 332 F.3d 1208, 12222 (9th Cir. 2003) (citing *Simpson,* 29 F.3d at 1425).

[25] Additionally, under the proposal, practices, acts, or failures to act that have already caused material harm to the financial condition of the institution would not have to meet the ''likely'' standard, as there would be certainty with respect to the harm.

Risk of Loss to the Deposit Insurance Fund. An unsafe or unsound practice would also include a practice, act, or failure to act that, if continued, is likely to negatively affect an institution's ability to avoid FDIC receivership and present a material risk of loss to the DIF as a result of the failure. For example, the failure of an institution to implement appropriate contingency funding arrangements might not pose a risk of material harm to the financial condition of the institution, but could impair the institution's liquidity under stress and thus present an increased risk to the DIF. In other words, the proposed definition would capture a practice, act, or failure to act that materially increases the probability that an institution would fail and impose a material risk of loss to the DIF.

Harm. The proposed standard focuses on material harm to financial condition, and the agencies generally interpret harm to refer to financial losses. Therefore, to be an unsafe or unsound practice, a practice, act, or failure to act generally must have either caused actual material losses to the institution or must be likely to cause material loss or other negative financial impacts to the institution.[26] Conversely, that a practice, act, or failure to act caused actual but non-material financial losses to the institution is insufficient to meet the proposed standard.[27]

Nonfinancial risks impacting financial condition. The agencies also acknowledge that, in limited circumstances, other practices, acts, or failures to act may be captured because, if continued, they are likely to cause material harm to an institution's financial condition. For example, the term unsafe or unsound practice could include critical infrastructure or cybersecurity deficiencies that are so severe as to, if continued, be likely to result in a material disruption to the institution's core operations that prevent the institution, its counterparties, and its customers from conducting business operations and, in turn, be likely to cause material harm to the financial condition of the institution. The standard would not include risks to the institution's reputation unrelated to financial condition.[28]

Material harm. Under the proposed definition, to be considered an unsafe or unsound practice, the likely harm to an institution's financial condition or risk of loss to the DIF must also be material. Risks of minor harm to an institution's financial condition, even if imminent, would not rise to the level of an unsafe or unsound practice.[29] Instead, the agencies will consider the likely harm to an institution's financial condition to be material if it would materially impact the institution's capital, asset quality, liquidity, earnings, or sensitivity to market risk,[30] or would materially impact the risk that an institution fails and causes a loss to the DIF. Going forward, the agencies expect that it would be rare for an institution to exhibit unsafe or unsound practices, as defined in the proposed rule, based solely on the institution's policies, procedures, documentation or internal controls, without significant weaknesses in the institution's financial condition (*i.e.,* weaknesses that caused material harm to the financial condition of the institution, or were likely to materially harm the financial condition of the institution or likely to present material risk of loss to the DIF). The agencies considered but did not propose to more precisely define the materiality of harm required under the proposed definition, such as through measures of capital or liquidity outflows. Instead, the agencies invite comment on what, if any, more precise measures of material harm are appropriate.

Tailoring required. The proposal also explains that the agencies will tailor their supervisory and enforcement actions under 12 U.S.C. 1818 (as well as their issuance of MRAs, as discussed further below) based on the capital structure, riskiness, complexity, activities, asset size, and any financial risk-related factor that the agencies deem appropriate. This includes tailoring with respect to the requirements or expectations set forth in such actions as well as whether, and the extent to which, such actions are taken. As such, the agencies expect that finding an unsafe or unsound practice would be a much higher bar for a community bank than for a larger institution when considered against the overall operations of the institution. For example, as applied to the threshold for material harm, the agencies would not expect that a particular projected percentage decrease in capital or liquidity that rises to the level of materiality for the largest institutions would necessarily also be material for community banks. The agencies invite comment on whether the agencies should provide additional specificity. Generally, because unsafe or unsound practices by institution-affiliated parties must, if continued, be likely to materially harm the financial condition of an institution, the same tailored standard would, going forward, apply to practices, acts, or failures to act by institution-affiliated parties of the institution.

For these reasons, the agencies propose to define the term unsafe or unsound practice to mean a practice, act, or failure to act, alone or together with other practices, acts, or failures to act, that (1) is contrary to generally accepted standards of prudent operation; and (2)(i) if continued, is likely to (A) materially harm the financial condition of an institution; or (B) present a material risk of loss to the DIF; or (ii) materially harmed the financial condition of the institution.

B. Matters Requiring Attention

The agencies are proposing to establish uniform standards for examiners' communication of MRAs. Under the proposed rule, an examiner would be permitted to issue an MRA to address certain risks to the financial condition of an institution and violations of banking or banking-related laws or regulations.

Through various statutory examination and reporting authorities, Congress has conferred upon the agencies the authority to exercise visitorial powers and examination authorities with respect to supervised institutions.[31] The Supreme Court has indicated support for a broad reading of certain visitorial powers.[32] Examination and visitorial powers of the agencies facilitate early identification of supervisory concerns that may not rise to a violation of law, unsafe or unsound practice, or breach of fiduciary duty under section 8 of the FDI Act. These

[26] *See Landry,* 204 F.3d at 1138.

[27] *See Johnson* v. *OTS,* 81 F.3d at 204.

[28] *See Gulf Fed. Sav. & Loan Assoc. of Jefferson Parish,* 651 F.2d at 264–65 (''Approving intervention under the [FHLBB]'s ''loss of public confidence'' rationale would result in open-ended supervision. . . . The Board's rationale would permit it to decide, not that the public has lost confidence in Gulf Federal's financial soundness, but that the public may lose confidence in the fairness of the association's contracts with its customers.'').

[29] *See, e.g., id.* at 259 (an institution with $75 million in assets did not engage in an unsafe or unsound practice when it misrepresented the calculation of interest rates on loans, which could have resulted in an $80,000 loss to the institution—a loss of far less than 1% of the institution's total assets).

[30] *See, e.g., Blanton,* 909 F.3d at 1172–73 (an institution-affiliated party engaged in an unsafe or unsound practice by permitting a customer to overdraft more than $2 million over two months, with outstanding overdrafts at one point totaling nearly 65% of the institution's Tier 1 capital, even though the institution's capital levels were critically deficient).

[31] 12 U.S.C. 481, 1463, 1464, 1820, 1867, 3105(c), 5412(b).

[32] *See, e.g., Cuomo* v. *Clearing House Ass'n,* 557 U.S. 519 (2009); *United States* v. *Gaubert,* 499 U.S. 315 (1991); *United States* v. *Phila. Nat'l Bank,* 374 U.S. 321 (1963).

powers provide the agencies with authority to issue MRAs and supervisory ratings.[33]

The OCC's current practice is to use MRAs to communicate concerns about an institution's ''deficient practices.'' [34] A deficient practice is a practice, or lack of practice, that (1) ''deviates from sound governance, internal control, or risk management principles and has the potential to adversely affect the bank's condition, including financial performance or risk profile, if not addressed,'' or (2) ''results in substantive noncompliance with laws or regulations, enforcement actions, or conditions imposed in writing in connection with the approval of any applications or other requests by the [institution].'' [35] The purpose of an MRA, unlike other forms of supervisory communications, is to bring a deficient practice to the attention of the institution's board of directors and management to ensure they address the deficiency. An MRA is not intended to serve as a vehicle for examiners to recommend best practices or enhancements to already acceptable standards. When the OCC communicates an MRA to an institution, it includes a corrective action stating what management or the board of directors must do to address the concern and eliminate the cause.[36] An institution is expected to develop an action plan to detail how it intends to correct the root causes of deficiencies rather than symptoms.[37] Although an institution has discretion to develop an adequate action plan as it deems appropriate, the OCC retains the ultimate authority to determine the method and timeframe for corrective action. The actions that an institution's board of directors and management take or agree to take in response to concerns in MRAs are factors in the OCC's decision to pursue an enforcement action and the severity of that action.[38]

The OCC tracks an institution's MRAs, including whether they are open, closed, past due, or pending validation. Current OCC policies require that MRAs must remain open until an institution has implemented, and examiners have verified and validated that the institution has consistently adhered to, an effective corrective action.[39] Validation requires the institution to demonstrate the corrective action is effective over a reasonable period, which may vary and is based on the sustainability of the corrected practice, not the institution's condition.[40]

For matters that do not warrant an MRA, examiners may offer informal recommendations to the board of directors and management related to potential policy enhancements or best practices.[41] Recommendations do not require specific corrective action or follow-up by examiners, and the OCC does not include recommendations in formal written communications to institutions, such as a report of examination.

The FDIC's current practice is to issue Supervisory Recommendations, including Matters Requiring Board Attention (MRBAs), as part of its supervisory process to communicate weaknesses in a bank's operations, governance, or risk management practices.[42] These supervisory tools are designed to promote timely corrective action and to strengthen institutions' overall safety and soundness.

MRBAs are used to inform an institution of the FDIC's views about changes needed in its practices, operations, or financial condition to help institutions prioritize their efforts to address examiner concerns, identify emerging problems, and correct deficiencies before the institution's condition deteriorates.[43] Boards of directors are expected to oversee management's development and implementation of corrective measures and to ensure timely resolution of the matters. The FDIC reviews the status of MRBAs in subsequent examinations or through offsite monitoring to ensure progress and remediation. The FDIC tracks and categorizes MRBAs to enable the agency to analyze and identify trends related to risk supervision findings.

Other Supervisory Recommendations are issued to highlight deficiencies or weaknesses that warrant management's attention but do not rise to the level of MRBAs. These recommendations are intended to promote sound governance, risk management, and operational practices and, if left unaddressed, may escalate into more significant supervisory concerns. Although these Supervisory Recommendations do not carry the same weight as MRBAs, management is expected to consider and respond to them and to implement corrective action as appropriate.

The agencies each apply their different standards for MRAs and MRBAs (collectively, matters requiring correction) to require institutions to align their conduct with supervisory expectations. But a common denominator of the agencies' current practices for supervisory criticisms is that examiners frequently issue matters requiring correction to communicate deficiencies beyond those that are central to, or in many cases that are directly relevant to, an institution's financial condition. The agencies do not currently require examiners to find that a practice is likely, or reasonably can be expected, to materially harm the financial condition of the institution. In practice, an institution must address the practices described in a matter requiring correction, regardless of whether the institution's board of directors and management consider the examiner's concerns to be accurate or important enough to prioritize. The agencies' expansive definition and application of matters requiring correction has resulted in a proliferation of supervisory criticisms for immaterial procedural, documentation, or other deficiencies that distract management from conducting business and that do not clearly improve the financial condition of institutions. In addition, in the agencies' supervisory experience, failure to correct a deficient practice communicated in a matter requiring correction often eventually results in an enforcement action.

To ensure supervision efforts are appropriately focused on material financial risks and increase consistency in supervisory criticisms, the agencies are issuing this joint proposal regarding their standard for issuing matters requiring correction, which would be in the form of MRAs.[44]

The proposed rule would provide that the agencies may only issue an MRA for a practice, act, or failure to act, alone or

[33] *See* 12 U.S.C. 481, 1463, 1820(b), 1867, 3105(c), 5412(b).

[34] OCC, Comptroller's Handbook, ''Bank Supervision Process'' at 46 (March 2025).

[35] *Id.* at 134.

[36] *Id.* at 46.

[37] *Id.* at 38.

[38] OCC, Policies and Procedures Manual: PPM 5310–3, ''Bank Enforcement Actions and Related Matters'' at 3 (May 25, 2022), available at *https://www.occ.gov/news-issuances/bulletins/2023/bulletin-2023-16.html.*

[39] ''Verification'' is the process by which the OCC confirms that an institution has implemented the agreed upon corrective actions to address a deficient practice described in an MRA. ''Validation'' is the process by which the OCC confirms the effectiveness and sustainability of corrective actions that an institution has implemented.

[40] The OCC must determine through examination or review of audit reports and work papers that the institution's corrective actions are sustainable.

[41] OCC, Comptroller's Handbook, ''Bank Supervision Process'' at 46.

[42] *See* Statement of the FDIC Board of Directors on the Development and Communication of Supervisory Recommendations, available at *https://www.fdic.gov/about/governance/recommendations.html.*

[43] *See* FDIC, Risk Management Manual of Examination Policies, Report of Examination Instructions (last updated April 2024), at 16.1–8.

[44] For the FDIC, MRAs would replace MRBAs.

together with one or more other practices, acts, or failures to act, that (1)(i) is contrary to generally accepted standards of prudent operation; and (ii)(A) if continued, could reasonably be expected to, under current or reasonably foreseeable conditions, (*1*) materially harm the financial condition of the institution; or (*2*) present a material risk of loss to the DIF; or (B) has already caused material harm to the financial condition of the institution; or (2) is an actual violation of a banking or banking-related law or regulation.

Under the proposed rule, the phrases ''materially harm the financial condition of an institution,'' ''materially harmed the financial condition of an institution,'' and ''material risk of loss to the Deposit Insurance Fund'' would have the same meaning for MRAs as they would have for the proposed definition of unsafe or unsound practice. The proposed MRA standard would accordingly focus supervisory and institution resources on material financial risks. Similar to the proposed definition of an unsafe or unsound practice, practices, acts, or failures to act that are captured by the proposed MRA standard would, in the vast majority of cases, relate directly to risks of material harm to the financial condition of an institution or violations of certain laws and regulations. Material financial risks will, in the vast majority of cases, relate directly, clearly and predictably to an institution's capital, asset quality, earnings, liquidity, or sensitivity to market risk. Additionally, the proposed standard for an MRA, like the proposed definition of an unsafe or unsound practice, would cover a practice, act, or failure to act that, ''if continued,'' has the potential to materially harm the financial condition of an institution.

As proposed, examiners could communicate an MRA for a practice, act, or failure to act that, if continued, could reasonably be expected to, under current or reasonably foreseeable conditions, (A) materially harm the financial condition of an institution or (B) present a material risk of loss to the DIF. The agencies intend for the ''could reasonably be expected to, under current or reasonably foreseeable conditions'' element in the proposed MRA standard to present a lower bar than does the ''likely'' element in the proposed unsafe or unsound practice standard.

To determine whether a practice, act, or failure to act, if continued, could reasonably be expected to, under current or reasonably foreseeable conditions, materially harm the financial condition of an institution, the proposed rule relies on examiners' judgments, based on objective facts and sound reasoning. The proposal would not permit examiners to issue MRAs based on potential future conditions that are possible but not reasonably foreseeable. Nonetheless, ''reasonably foreseeable'' does not necessarily mean the most likely future outcome and could include a range of possible outcomes. For example, in late 2022, the agencies could have considered it ''reasonably foreseeable'' that the federal funds rate and other market interest rates would rise considerably, and an institution's vulnerability to a significant rise in interest rates could have been grounds for an MRA. However, the proposal would not permit examiners to issue MRAs that purport to meet the proposed MRA standard as a pretext to force an institution to comply with an examiner's managerial judgment instead of the judgment of the institution's own management, in the absence of a reasonable expectation of material harm to the financial condition of the institution.

Under the proposed MRA standard, violations of banking or banking-related laws and regulations must be actual violations of a discrete set of federal and state law or regulation—those related to banking. This would generally include banking and consumer financial protection laws, but would not include laws and regulations outside of the banking and consumer finance context, such as tax laws.[45] Moreover, the agencies would not issue an MRA solely to address an institution's policies, procedures, or internal controls, unless those policies, procedures, or internal controls otherwise satisfied the regulatory standard for an MRA, even if those policies, procedures, or internal controls could lead to a violation of law or regulation. Accordingly, under the proposed rule, examiners could issue an MRA for a practice, act, or failure to act related to a violation of law or regulation only if (1) the examiner identified actual violations of a banking or banking-related law or regulation (as opposed to, for example, bank policies, procedures, or programs that could lead to violations of such laws or regulations) or (2) the practice, act, or failure to act meets the MRA standard in the proposed rule relating to material financial harm.

As discussed above, the agencies will tailor their issuance of MRAs based on the capital structure, riskiness, complexity, activities, asset size, and any financial risk-related factor that the agencies deem appropriate. This includes tailoring with respect to the requirements or expectations set forth in such actions as well as whether, and the extent to which, such actions are taken.

The agencies also recognize that a more targeted use of MRAs, as proposed in this rule, may benefit from complementary changes to the agencies' MRA verification and validation procedures to ensure MRAs are lifted as soon as practicable after the institution completes corrective actions. The agencies note that, under current practices, MRAs are often kept outstanding for a prolonged period of time after an institution has fully completed its remediation of the underlying practice, act, or failure to act because examiners seek to see demonstrated sustainability of the remediation before an MRA is closed. This practice has the potential to distract an institution's board of directors and management, as well as examiners, by inflating the number of MRAs based on practices, acts, or failures to act that have already been remediated. The agencies invite comment on ways in which the agencies can improve their respective MRA verification and validation policies and procedures.

Informal Supervisory Communications

For concerns that do not rise to the level of an MRA, agency examiners may informally provide non-binding suggestions to enhance an institution's policies, practices, condition, or operations.[46] The OCC refers to these communications as ''supervisory observations.'' For example, examiners could offer suggestions on ways to enhance an institution's external audit practices, succession planning, or risk management processes. Given that these supervisory communications are not binding, the agencies would not be permitted to require an institution to submit an action plan to incorporate examiners' supervisory observations. Examiners would not be permitted, and the institution would not be required, to track the institution's adoption or implementation of examiner suggestions. Although examiners would be permitted to informally make such supervisory communications to the

[45] Banking and consumer financial protection laws include the enumerated consumer laws under the Consumer Financial Protection Act, 12 U.S.C. 5481(12), only with respect to institutions for which the agencies have supervisory or enforcement authority under such laws under 12 U.S.C. 5515–5516.

[46] Supervisory observations are separate and distinct from requirements that the agencies impose in connection with an application, notice, or other request, including through a condition imposed in writing under 12 U.S.C. 1818.

institution's board of directors, the institution's management would not be required to present the supervisory communications to the institution's board of directors. In addition, the agencies would not be permitted to criticize an institution for declining to remediate a concern or weakness identified by such a supervisory communication or to escalate the communication into an MRA on the sole basis of an institution's lack of adoption of an examiner's suggestion offered in multiple examination cycles. If an institution's condition deteriorates following a supervisory communication, the circumstances underlying the supervisory communication could later be the basis for an MRA or enforcement action, but only if the criteria for an MRA or enforcement action under the proposal are satisfied, and not solely on the basis of failing to respond to the supervisory communication. This framework would allow examiners to share their expertise with management and the board of directors about potential enhancements while leaving decisions regarding the implementation of any enhancements to the institution.

In addition, the agencies would also be permitted to include supervisory communications in a report of examination to explain changes in ratings. For example, if a bank is downgraded from a ''1'' to a ''2'' in a particular CAMELS component, the agency may explain this downgrade, and such an explanation would constitute a ''supervisory communication.'' As noted above, such an explanation would not impose any binding requirement on an institution to remediate any weakness identified, and the agency could not further downgrade the institution solely on the basis of failing to remediate such a weakness.

C. Composite Ratings Downgrades

The agencies believe that the changes to the standards for unsafe or unsound practices and MRAs in the proposed rule are important to prioritize material financial risks and compliance with banking and banking-related laws and regulations. In furtherance of the agencies' goal to prioritize attention on material financial risks and legal compliance, the agencies also expect that any downgrade in an institution's composite supervisory rating to less-than-satisfactory [47] would only occur in circumstances in which the institution receives an MRA that meets the standard outlined in the proposed rule or an enforcement action pursuant to the agencies' enforcement authority, including an enforcement action based on an unsafe or unsound practice as defined in the proposed rule.[48] In the case of an insured depository institution, a composite rating of ''3'' in the CAMELS rating systems is generally considered ''less-than-satisfactory.'' [49] A downgrade to a less-than-satisfactory composite supervisory rating can have significant regulatory and statutory consequences for an institution.[50] By connecting the assignment of a less-than-satisfactory composite rating to the issuance of MRAs and enforcement actions, the agencies would generally ensure a less-than-satisfactory composite rating is tied to a potential material harm to the institution's financial condition, potential material risk of loss to the DIF, actual material harm to the institution's financial condition, or actual violations of certain laws and regulations. Although section 8 of the FDI Act provides for grounds for an enforcement action based on a violation of law, the agencies expect that they would not downgrade an institution's composite rating to less-than-satisfactory based only on a violation of law, unless such practice, act, or failure to act that results in the violation of law also is likely to cause material harm to the financial condition of the institution, is likely to present a material risk of loss to the DIF, or has caused material harm to the institution's financial condition, as the agencies propose under the unsafe or unsound practice definition.

III. Request for Comments

The agencies request feedback on all aspects of the proposed rule, including:

Question 1: What effect would the proposed rule have on the agencies' ability to address misconduct by institutions under their enforcement and supervisory authority? What effect would the proposed rule have on the agencies' ability to address misconduct by institution-affiliated parties under their enforcement and supervisory authority?

Question 2: Does the proposed definition of unsafe or unsound practice appropriately capture the types of objectionable practices, acts, or failures to act that should be captured? Please explain.

Question 3: Does the proposed definition of unsafe or unsound practice provide the agencies with adequate authority to proactively address risks that could cause a precipitous decline in an institution's financial condition, such as a liquidity event or a cybersecurity incident?

Question 4: Other than ''material,'' are there terms that the agencies should consider to specify the magnitude of the risk required for a practice, act, or failure to act, to be considered an unsafe or unsound practice, e.g., ''abnormal,'' ''significant,'' or ''undue''?

Question 5: Is ''likely'' the appropriate standard to specify the probability of risk required for a practice, act, or failure to act, to be considered an unsafe or unsound practice? Is another term more appropriate, e.g., ''reasonably foreseeable,'' ''could reasonably,'' ''imminent,'' ''abnormal probability''? Should the agencies specify a minimum percentage of likelihood? If so, what would be an appropriate minimum percentage of likelihood? Should the agencies consider a standard that does not imply an assessment of a forward-looking probability?

Question 6: Should the agencies consider specifying one or more quantitative measurements to define or exemplify ''material harm'' to the financial condition of the institution?

Question 7: Should the agencies define ''materially'' in the regulation? If so, how?

Question 8: Should the agencies define harm to the financial condition of an institution in the regulation? If so, how? Should this include specific indicators or thresholds, or adverse effects to capital, liquidity, or earnings?

Question 9: Section 8 of the FDI Act uses the term ''unsafe or unsound practice'' numerous times and in different contexts. Should the proposed definition of unsafe or unsound practice apply to all uses of the term within section 8 of the FDI Act? If not, what provisions should be excluded? Should the agencies have a uniform definition

[47] This refers to an institution's composite rating under the Uniform Financial Institution Rating System (UFIRS). Currently, the UFIRS incorporates six individual component ratings: capital, asset quality, management, earnings, liquidity, and sensitivity to market risk. The UFIRS also incorporates a composite rating, which functions as an overall assessment of the financial institution. The composite rating generally bears a close relationship to the component ratings assigned, but the composite rating is not derived by computing an arithmetic average of the component ratings. For federal branches and agencies of foreign banks, this refers to the institution's composite rating under the rating system applicable to federal branches and agencies of foreign banks.

[48] The agencies would not necessarily expect to issue a new MRA or take an additional enforcement action before further downgrades in an institution's composite rating unless the additional downgrade was based on new concerns or there is further deterioration in the institution's condition.

[49] OCC, Comptroller's Handbook, ''Bank Supervision Process'' at 71.

[50] For example, a less-than-satisfactory composite rating may limit an institution's ability to engage in interstate mergers, establish a de novo interstate branch, or control or hold an interest in certain subsidiaries. *See* 12 U.S.C. 24a, 36(g), 1831u, 1843(m).

for purposes of section 8, as proposed, or should there be nuances depending on the context?

Question 10: Should the proposed definition of unsafe or unsound practice apply to other uses of the term or references to section 8 of the FDI Act within Title 12 of the CFR? If so, what provisions should be included? What, if any, effect would the proposed definition have on the agencies' ability to engage in rulemaking?

Question 11: Should the proposed definition of unsafe or unsound practice apply to uses of the term beyond section 8 of the FDI Act? If yes, what provisions should be included? For example:

- *—Tier 2 and Tier 3 Civil Money Penalty provisions (12 U.S.C. 93, 504, 1817, 1972).*
- *—Capital standards in 12 U.S.C. 1464(t).*
- *—Definition of institution-affiliated party in 12 U.S.C. 1813(u).*
- *—Grounds for appointing a conservator or receiver in 12 U.S.C. 1821(c)(5).*

Question 12: Is the agencies' use of the term ''generally accepted standards of prudent operations,'' as described in this proposal, appropriate for making safety and soundness determinations? Are there are other terms the agencies should consider using instead?

Question 13: Other than ''could reasonably be expected,'' are there terms that the agencies should consider to specify the probability of risk required for a practice, act, or failure to act, to be communicated as an MRA, e.g., ''could possibly,'' ''could foreseeably,'' ''would''? Is this standard sufficiently distinct from the likelihood requirement for unsafe or unsound practices so as to convey a lower bar?

Question 14: The proposal would allow the agencies to issue MRAs based on ''reasonably foreseeable conditions.'' Is ''reasonably foreseeable'' the right standard? As an example, at what point in Silicon Valley Bank's timeline would an MRA for weaknesses in interest rate risk management have been (1) appropriate and (2) permissible under the proposal? If another standard would be more appropriate, please explain.

Question 15: If the agencies adopt the proposed standard for the issuance of an MRA, how should the agencies determine when to close an MRA? Should the agencies provide additional clarity in a final rule? Are there unique verification and validation concerns associated with the proposed standard that the agencies should consider? Should verification and validation procedures be tailored for different types of institutions, considering factors like the sophistication of an institution and the frequency of examinations? Should there be a limit (e.g., one or two quarters; one examination cycle) to the duration that an MRA may remain open after an institution corrects the practice resulting in the MRA? If an MRA is not remediated for a certain period of time, what steps should the agencies take?

Question 16: Should the proposal provide any clarity around timeframes for remediating MRAs? If so, should small institutions (and those with limited resources) be provided with longer timeframes to address MRAs? Should institutions with more severe vulnerabilities (such as 5-rated institutions) be provided shorter timeframes?

Question 17: Should the proposed standard for issuing MRAs also apply to issuing violations of law? Why or why not? If a different standard should apply, please describe the standard and explain why. If the agencies did not use MRAs for violations of law, how should the agencies approach violations of law?

Question 18: Under the proposal, the agencies could cite violations of banking and banking-regulated laws or regulations as MRAs. Is ''banking and banking-related'' the right universe? Should the agencies provide additional clarity on what constitutes banking and banking-related laws? If so, what should be included? Should the agencies limit the scope of banking and banking-related laws to federal banking and banking-related law? Why or why not?

Question 19: Should the agencies provide additional clarity on the interplay between MRAs and CAMELS ratings? If so, how?

Question 20: Should the agencies require any downgrade to a CAMELS composite rating of 3 or below to be accompanied by an MRA or enforcement action? Are there instances in which, for example, general economic conditions or idiosyncratic risk factors could cause financial deterioration without evidence of objectionable practices, acts, or failures to act? Could such a provision incentivize issuing more MRAs? Please explain.

Question 21: To what extent should the agencies use MRAs to address banks that are vulnerable to potential economic or other shocks? For example, before the Federal Reserve began raising interest rates in 2022, or shortly after it began raising interest rates, at what point, if any, would it have been appropriate for a banking agency to issue MRAs to institutions that were vulnerable to a rise in interest rates? Does the proposal appropriately allow MRAs in such cases, if applicable? Under the proposal, are there other supervisory tools to address such risks?

Question 22: How should the agencies tailor the framework for community banks? For example, should there be different standards for institutions of different sizes and complexity? Please explain.

Question 23: Should the proposal tie material harm to the financial condition of an institution more specifically to the impact of a practice, act or failure to act on the institution's capital? Should there be a higher standard for large banking organizations compared to all other banking organizations? Should the potential or actual harm to an institution's financial condition be tied to the capital standards in the prompt correction action framework set forth in 12 U.S.C. 1831o?

Question 24: Should the proposed regulation tie material harm to the financial condition of an institution more specifically to the impact of a practice, act or failure to act on the institution's liquidity? Should there be a threshold for a liquidity event, such as an outflow of a hypothetical percentage of an institution's short-term deposits or other short-term liabilities over a defined period?

Question 25: How should the proposed regulation interact with the Interagency Guidelines Establishing Safety and Soundness Standards promulgated under 12 U.S.C. 1831p–1 (e.g., 12 CFR part 30) (Safety and Soundness Standards)? Should the agencies similarly revise the Safety and Soundness Standards in a manner consistent with the proposed regulation? Should a violation of the Safety and Soundness standards be considered a violation of banking or banking-related law or regulation for purposes of the proposed regulation?

Question 26: What additional steps should the agencies consider to reform supervision, consistent with the goals of the proposal? The agencies have an extensive supervisory framework including examination manuals, regulations, guidance, and internal procedures governing how banks are supervised. What modifications to these various documents are warranted? How should the agencies sequence these actions?

IV. Expected Effects

As previously discussed, the agencies propose to revise the framework for communicating MRAs to supervised insured depository institutions (IDIs) to focus on practices, acts, or failures to act that, if continued, could reasonably be expected to, under current or reasonably foreseeable conditions, (A) materially harm the financial condition of an institution or (B) present a material risk

of loss to the DIF, or violations of a banking or banking-related law or regulation. The proposal would provide a consistent nationwide standard for the issuance of MRAs to promote greater clarity for IDIs and IDI-affiliated parties.

This analysis utilizes all regulations and guidance applicable to IDIs supervised by the agencies, as well as information on the financial condition of supervised IDIs as of the quarter ending June 30, 2025, as the baseline to which the effects of the proposed rule are estimated.

Scope

The proposal, if adopted, would not impose any obligations on supervised IDIs, and supervised IDIs would not need to take any action in response to this rule. The proposal, if adopted, would require the agencies to revise their current practices regarding the identification and communication of examination findings. Therefore, the agencies would be the only entities directly affected by the proposal.

The proposal would indirectly affect supervised IDIs through examinations and reports of examination (ROEs) conducted by the agencies. All IDIs subject to examinations by the agencies as of June 30, 2025 could be indirectly affected proposal. Only a subset of IDIs are examined every year, therefore the proposed rule could indirectly affect a subset of supervised IDIs each year.

Costs and Benefits

The following sections discuss qualitatively some indirect benefits and indirect costs of the proposal.

Indirect Benefits to IDIs

The proposal, if adopted, would pose two types of indirect benefits to supervised IDIs: (1) reductions in, or more efficient use of, costs to comply with findings from ROEs, and (2) possible increases in proceeds from the provision of banking products and services. By raising the standard against which an IDI's action, or inaction, is assessed to be eligible for an MRA, IDIs may experience lower volumes of examination findings, particularly MRAs. Further, by potentially reducing the number of examination findings not related to material risks to the financial condition of the IDI, the proposed rule may enable IDIs that do receive MRAs to more effectively address those risks. Finally, by enacting a consistent definition of conditions that merit the use of MRAs across the agencies, the proposed rule may improve clarity and reduce uncertainty of ROE findings, relative to the baseline. Such reductions in findings and increases in clarity may reduce compliance costs or increase the efficiency with which compliance costs are expended by IDIs to respond to ROE findings. The agencies do not have the information necessary to quantify such potential indirect benefits.

Negative feedback from regulators during the examination process may discourage IDIs from taking part in activity and could result in reduced provision of banking products and services. To the extent that matters requiring the attention of an institution's board of directors and management are currently identified and used in a way that raises potential chilling effects, the proposal could result in fewer such effects relative to the baseline. A reduction in chilling effects could enable IDIs to provide financial products and services to entities that they would not have otherwise. The FDIC does not have the data necessary to quantify this potential benefit.

Indirect Costs to IDIs

If adopted the proposed rule may reduce the volume of examination findings communicated to IDIs and this could pose certain indirect costs. To the extent that the proposed rule, if adopted, delayed the identification of material risks to the financial condition of an IDI, such entities could incur higher costs to resolve such issues, associated losses, and in extreme cases, failure. However, as previously discussed, the agencies believe that proposed definition of unsafe or unsound practice better prioritizes the identification and communication of such risks. Therefore, the agencies believe that such costs are unlikely to be substantial. Moreover, it is also possible that under the proposal risks to IDIs and risks of IDI failures could decrease significantly, because under the proposal IDI management and examiners would prioritize the identification and remediation of issues that could result in material financial loss to IDIs.

V. Alternatives Considered

The agencies considered leaving the current regulatory framework unchanged. However, as previously discussed, the current methods for communicating certain supervisory examination findings can promote confusion or not appropriately focus supervisory and institution resources on the most critical financial risks to institutions and the financial system. Therefore, the agencies believe that the proposal is more appropriate.

VI. Regulatory Analyses

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 [51] (PRA) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies have reviewed this proposed rule and determined that it does not create any information collection or revise any existing collection of information. Accordingly, no PRA submissions to OMB will be made with respect to this proposed rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act [52] (RFA) requires an agency to consider the impact of its proposed rules on small entities. In connection with a proposed rule, the RFA generally requires an agency to prepare an Initial Regulatory Flexibility Analysis (IRFA) describing the impact of the rule on small entities, unless the head of the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities and publishes such certification along with a statement providing the factual basis for such certification in the **Federal Register**. An IRFA must contain: (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule that accomplish its stated objectives.

1. OCC

The OCC currently supervises 1,012 institutions (commercial banks, trust companies, Federal savings associations, and branches or agencies of foreign banks),[53] of which

[51] 44 U.S.C. 3501–3521.

[52] *Id.*

[53] Based on data accessed using the OCC's Financial Institutions Data Retrieval System on September 8, 2025.

approximately 609 are small entities under the RFA.[54]

In general, the OCC classifies the economic impact on an individual small entity as significant if the total estimated impact in one year is greater than 5 percent of the small entity's total annual salaries and benefits or greater than 2.5 percent of the small entity's total non-interest expense. Furthermore, the OCC considers 5 percent or more of OCC-supervised small entities to be a substantial number, and at present, 30 OCC-supervised small entities would constitute a substantial number. Therefore, since the proposed rule would affect all OCC-supervised institutions, a substantial number of OCC-supervised small entities would be impacted.

This proposed rulemaking imposes no new mandates, and thus no direct costs, on affected OCC-supervised institutions. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small entities.

2. FDIC

Generally, the FDIC considers a significant economic impact to be a quantified effect in excess of 5 percent of total annual salaries and benefits or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of one or more of these thresholds typically represent significant economic impacts for FDIC-insured institutions.

The FDIC believes that the proposed rule will not have a significant economic impact on a substantial number of small entities [55] because the proposed rule will not pose reporting, recordkeeping and other compliance requirements [56] on small, FDIC-supervised IDIs. However, the proposed rule could present significant indirect benefits to small, FDIC-supervised IDIs. Therefore, the FDIC is presenting an Initial Regulatory Flexibility Act Analysis in this section.

Reasons Why This Action Is Being Considered

The lack of a consistent nationwide standard about the scope of the term unsafe or unsound practice, as interpreted by the courts, has caused uncertainty for institutions and institution-affiliated parties.[57] The proposed regulatory definition would provide a consistent nationwide standard to reduce burden and provide greater clarity for institutions and institution-affiliated parties.

Policy Objectives

The policy objectives are to promote greater clarity and certainty regarding enforcement and supervision standards so that examiners and IDIs prioritize material financial risks to IDIs and avoid unnecessary regulatory burden.

Legal Basis

Pursuant to the provisions of section 8 of the FDI Act (12 U.S.C. 1818), the FDIC is authorized to take enforcement actions against depository institutions,[58] and institution-affiliated parties [59] that have engaged in an ''unsafe or unsound practice.'' Under this authority, the FDIC is proposing to define by regulation the term ''unsafe or unsound practice'' for purposes of section 8 of the FDI Act. For a more detailed discussion of the proposed rule's legal basis please refer to section A. Unsafe or Unsound Practices, within Section II of the preamble.

Description of the Rule

The agencies propose implementing a definition of unsafe or unsound practice for purposes of section 8 of the FDI Act that would focus on material risks to the financial condition of an IDI and require the likelihood that an imprudent practice, act, or omission, if continued, would pose a material risk to the IDI's financial condition. The agencies are also proposing to establish uniform standards for examiners' communication of MRAs. Under the proposed rule, an examiner would be permitted to issue an MRA to address certain risks to the financial condition of an institution. For a more detailed description of the proposal please refer to section A. Unsafe or Unsound Practices, within Section II of the preamble.

Small Entities Affected

The proposal, if adopted, would not impose any obligations on small, FDIC-supervised entities, and supervised entities would not need to take any action in response to this rule. The proposal, if adopted, would require the FDIC to revise their current practices regarding the communication of IDI examination findings. Therefore, the FDIC would be the only entity directly affected by the proposal.

The proposal would indirectly affect small, FDIC-supervised IDIs through examinations and reports of examinations conducted by the agencies. As of the quarter ending June 30, 2025, the FDIC supervised 2,808 IDIs, of which 2,085 are small entities for the purposes of the RFA.[60] Only a subset of small, FDIC-supervised IDIs are examined every year, therefore the proposed rule could indirectly affect a subset of small, FDIC-supervised IDIs each year.

Cost and Benefits

To estimate the expected effects of the proposal, this analysis considers all relevant regulations and guidance applicable to these institutions, as well as information on the financial condition of all IDIs as of the quarter ending June 30, 2025.

The proposal, if adopted, would pose two types of indirect benefits to small, FDIC-supervised IDIs: (1) reductions in, or more efficient use of, costs to comply with findings from ROEs, and (2) possible increases in proceeds from the provision of banking products and services. By raising the standard against which an IDI's action, or inaction, is assessed to be eligible for an MRA, IDIs may experience lower volumes of examination findings, particularly MRAs. Further, by potentially reducing the number of examination findings not

[54] The OCC bases its estimate of the number of small entities on the Small Business Administration's size thresholds for commercial banks and savings institutions, and trust companies, which are $850 million and $47 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining if it should classify an OCC-supervised institution as a small entity. The OCC used average quarterly assets in December 31, 2024 to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the U.S. Small Business Administration's *Table of Size Standards*.

[55] SBA defines a small banking organization as having $850 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by 87 FR 69118, effective December 19, 2022). In its determination, the ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses an insured depository institution's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the insured depository institution is ''small'' for the purposes of the RFA.

[56] 5 U.S.C. 603(b)(4).

[57] *See, e.g., Calcutt* v. *FDIC,* 37 F.4th 293, 325 (6th Cir. 2022), *rev'd on other grounds,* 598 U.S. 623 (2023) (citing *Seidman,* 37 F.3d at 926–27) (''[Twelve U.S.C. 1818] does not define an 'unsafe or unsound practice,' and the term is interpreted flexibly.''); *id.* at 353–57 (Murphy, J., dissenting) (discussing circuit split and reliance on legislative history as opposed to plain text); *see also Greene Cnty. Bank,* 92 F.3d at 636.

[58] A depository institution generally refers to an insured depository institution as defined in 12 U.S.C. 1813(c)(2); any national banking association chartered by the OCC, including an uninsured association; or a branch or agency of a foreign bank. Refer to specific provisions of 12 U.S.C. 1818 regarding their applicability to a specific institution. *See* 12 U.S.C. 1818(b)(4)–(5).

[59] *See id.* 1813(u).

[60] FDIC Call Report Data, June 30, 2025.

related to material risks to the financial condition of the IDI, the proposed rule may enable IDIs that do receive MRAs to more effectively address those risks. Finally, by enacting a consistent definition of conditions that merit the use of MRAs across agencies the proposed rule may improve clarity and reduce uncertainty of ROE findings, relative to the baseline. Such reductions in findings and increases in clarity may reduce compliance costs or increase the efficiency with which compliance costs are expended by IDIs to respond to ROE findings. The agencies do not have the information necessary to quantify such potential indirect benefits.

Negative feedback from regulators during the examination process may discourage IDIs from taking part in activity and could result in reduced provision of banking products and services. To the extent that matters requiring the attention of an institution's board of directors and management are currently identified and used in a way that raises potential chilling effects by, the proposal could result in fewer such effects relative to the baseline. A reduction in chilling effects could enable IDIs to provide financial products and services to entities that they would not have otherwise. The FDIC does not have the data necessary to quantify this potential benefit. Moreover, it is also possible that under the proposal risks to small, FDIC-supervised IDIs and risks of IDI failures could decrease significantly, because under the proposal IDI management and examiners would prioritize the identification and remediation of issues that could result in material financial loss to IDIs.

FDIC cannot quantitatively estimate the indirect effects that small, FDIC-supervised IDIs are likely to incur if the proposed rule were adopted. However, in the four quarters ending June 30th, 2025, 5 percent of total annual salaries and benefits or 2.5 percent of total noninterest expenses amounts to $139,850 and $124,175, respectively, for the median small, FDIC-supervised institution.[61] The indirect benefits that a small, FDIC-supervised institution could realize as a result of the proposed rule would depend on changes in the volume of findings of examination and the compliance costs to address those examination findings, relative to the baseline. The proposed rule would establish a definition of unsafe or unsound practice that would result in issuances of MRAs only where a practice, act, or failure to act that, if continued, could reasonably be expected to, under current or reasonably foreseeable conditions, materially harm the financial condition of an institution. The FDIC believes that it is plausible that the proposed rule, if adopted, could pose indirect benefits to FDIC-supervised IDIs that exceed $139,850 and $124,175 a year for a substantial number of small, FDIC-supervised IDIs.

The FDIC invites comments on all aspects of the supporting information provided in this RFA section, and in particular, whether the proposed rule would have any significant effects on small entities that the FDIC has not identified?

OCC Unfunded Mandates Reform Act

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[62] Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year ($187 million as adjusted annually for inflation). Pursuant to section 202 of the UMRA,[63] if a proposed rule meets this UMRA threshold, the OCC would need to prepare a written statement that includes, among other things, a cost-benefit analysis of the proposal. The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

This proposed rulemaking imposes no new mandates—and thus no direct costs—on affected OCC-supervised institutions. The OCC, therefore, concludes that the proposed rule would not result in an expenditure of $187 million or more annually by state, local, and tribal governments, or by the private sector. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4802(a), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the agencies will consider, consistent with principles of safety and soundness and the public interest: (1) any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of the proposed rule. The agencies request comment on any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions, and their customers, and the benefits of the proposed rule that the agencies should consider in determining the effective date and administrative compliance requirements for a final rule.

Providing Accountability Through Transparency Act of 2023

The Providing Accountability Through Transparency Act of 2023, 12 U.S.C. 553(b)(4), requires that a notice of proposed rulemaking include the internet address of a summary of not more than 100 words in length of a proposed rule, in plain language, that shall be posted on the internet website *www.regulations.gov.*

The Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation propose to define the term ''unsafe or unsound practice'' for purposes of 12 U.S.C. 1818 and to revise the supervisory framework for the issuance of Matters Requiring Attention and other supervisory communications.

The proposal and the required summary can be found at *https://www.regulations.gov* by searching for Docket ID OCC–2025–0174 and *https://occ.gov/topics/laws-and-regulations/occ-regulations/proposed-issuances/index-proposed-issuances.html.*

Executive Order 12866

Executive Order 12866, titled ''Regulatory Planning and Review,'' as amended, requires the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget to determine whether a proposed rule is a ''significant regulatory action'' prior to the disclosure of the proposed rule to the public. If OIRA finds the proposed rule to be a ''significant regulatory action,'' Executive Order 12866 requires the agencies to conduct a cost-benefit analysis of the proposed rule. Executive Order 12866 defines ''significant regulatory action'' to mean a regulatory action that is likely to (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or

[61] FDIC Call Report Data, June 30, 2025.

[62] 2 U.S.C. 1531 *et seq.*

[63] *Id.* 1532.

planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

OIRA has deemed that this proposed rule is an economically significant regulatory action under Executive Order 12866 and, therefore, is subject to review under Executive Order 12866. The agencies' analysis conducted in connection with Executive Order 12866 is set forth below.

1. OCC

The OCC currently supervises 1,012 national banks, federal savings associations, trust companies and branches and agencies of foreign banks (collectively, banks). This proposed rule would apply to all OCC-supervised institutions. The OCC expects that OCC-supervised institutions would have both direct and indirect benefits as well as indirect costs as a result of this proposal.

Specifically, the proposed rule would result in several direct benefits to OCC-supervised institutions, namely, significant cost and time savings to institutions because they would have fewer MRA issuances and enforcement actions (collectively, issues) to address going forward. Banks can incur significant direct costs arising from issues. For example, some banks hire external consultants, for which hourly rates can range from between $300 and $1,200 an hour for top tier firms [64] [65] to $150 to $300 an hour for lower tier firms. And financial advisory firms may charge $250 to $550 per hour.[66] [67] To the extent that there may be less need for consultants, banks will directly benefit from consultant cost savings.

In addition to consultant fees, banks incur other direct costs to successfully address issues and pay any associated penalties. These costs may include increased hiring and retention of appropriately qualified employees, training for existing employees, time expenditure of employees (which may include time spent addressing the underlying issue, time by management and the board to review and approve changes made, time spent working with external consultants, time conducting internal audit verification, and time spent in partnership with the OCC in ongoing follow up communications and possibly examinations specific to the issue), updating processes and procedures, and addressing the underlying issue itself. If the issue has to do with bank systems or infrastructure, these costs could include technology costs, which could be very costly expenditures. If banks do not remediate issues in a timely fashion, they may also incur additional fines and penalties on top of the costs to remediate the issue itself.[68] [69]

While it would be difficult to precisely quantify the overall aggregate annual direct cost savings to OCC supervised institutions, the OCC expects that this proposal would result in an immediate and material cost savings to affected institutions, easily ranging from hundreds of millions to billions of dollars saved annually in aggregate. In addition to the significant direct cost savings from no longer needing to address issues, banks could potentially experience several indirect benefits, including clarity and consistency regarding MRA or enforcement concerns and less staffing turnover.

Regarding direct costs, this proposed rulemaking imposes no new mandates, and thus no direct costs, on affected OCC-supervised institutions. Regarding indirect costs, fewer issues may lead to delayed identification of material risks, which could include higher costs to resolve such issues, associated losses, and in extreme cases, failure. Nevertheless, those risks should be low because the proposed definition endeavors to more effectively prioritize the identification of material financial risks (*i.e.,* those most likely to cause significant stress) and therefore to lower the risk of bank failure. Accordingly, it is also possible that under the proposal risks to banks and risks of bank failures could decrease significantly, because under the proposal bank management and bank examiners would prioritize the identification and remediation of issues that could result in material financial loss to banks. Ultimately, the net effect will be dependent upon agency policies and oversight and responses by bank management to this proposal.

Overall, the OCC expects that the combined effects of the proposed rule's changes to result in net direct impact of a significant cost savings to all OCC-supervised institutions, easily ranging from hundreds of millions to several billion dollars in aggregate. There are also no explicit mandates in the proposal for affected institutions. How the proposal is executed and bank responses to the execution will ultimately determine the net impact over the longer term.

2. FDIC

This analysis utilizes all regulations and guidance applicable to FDIC-supervised IDIs, as well as information on the financial condition of IDIs as of the quarter ending June 30, 2025, as the baseline to which the effects of the proposed rule are estimated.

Scope

The proposal, if adopted, would not impose any obligations on FDIC-supervised IDIs, and supervised IDIs would not need to take any action in response to this rule. The proposal, if adopted, would require the FDIC to revise their current practices regarding the identification and communication of examination findings. Therefore, the FDIC would be the only entity directly affected by the proposal.

The proposal would indirectly affect FDIC-supervised IDIs through examinations conducted by the FDIC, and the resulting ROEs. All FDIC-supervised IDIs are subject to examination by the FDIC. As of the quarter ending June 30, 2025, the FDIC supervised 2,808 IDIs.[70] However, only a subset of IDIs are examined every year, therefore the proposed rule could

[64] *See* Clancy Fossum, Embark, *What Are The Fees & Hourly Rates Of Accounting Consulting Firms?* (Nov. 13, 2019), *https://blog.embarkwithus.com/what-are-the-fees-hourly-rates-of-accounting-consulting-firms#:~:text=in%20each%20category.-,Big%204%20Firms,global%20footprints%2C%20and%20charge%20accordingly.&text=Although%20Big%204%20fees%20in,be%20aware%20of%20before%20proceeding.*

[65] See Consulting Mavericks, *Average Consulting Rates By Industry, https://consultingmavericks.com/start/other/average-consulting-rates-by-industry/* (last visited Sept. 26, 2025).

[66] Note, these price ranges are as of 2019 economy prices.

[67] Financial advisory firms offer a wide range of services to clients that could be useful for MRA remediation. However, they typically do not provide traditional accounting services and do not sign off on opinions or certifications the way accounting firms do.

[68] *See* Perry Menezes et al., CSO Online, *How Financial Institutions Can Reduce Security and Other Risks from MRAs* | CSO Online (Aug. 29, 2023), *https://www.csoonline.com/article/650386/how-financial-institutions-can-reduce-security-and-other-risks-from-mras.html#:~:text=MRAs%20are%20expensive,has%20not%20done%20its%20job.*

[69] According to a 2021 survey by Better Market, the largest U.S. banks have incurred almost $200 billion in aggregate fines and penalties over the previous 20 years from the time of the survey. *See* BIP. Monticello Consulting Group, *Building Regulatory Resilience: A Deeper Look into Consent Orders & MRAs* (Apr. 20, 2021), *https://www.monticellocg.com/blog/2021/04/20/building-regulatory-resilience-a-deeper-look-into-consent-orders-mras#_ftn2.*

[70] FDIC Call Report data, June 30, 2025.

indirectly affect a subset of FDIC-supervised IDIs each year.

Annual Effect on the Economy or Adverse Effect

The proposal, if adopted, would pose two types of indirect benefits to FDIC-supervised IDIs: (1) reductions in, or more efficient use of, costs to comply with findings from ROEs, and (2) possible increases in proceeds from the provision of banking products and services. By raising the standard against which an FDIC-supervised IDI's action, or inaction, is assessed to be eligible for an MRA, IDIs may experience lower volumes of examination findings, particularly MRAs. Further, by potentially reducing the number of examination findings not related to material risks to the financial condition of the IDI, the proposed rule may enable IDIs that do receive MRAs to more effectively address those risks. Finally, by enacting a consistent definition of conditions that merit the use of MRAs across the agencies, the proposed rule may improve clarity and reduce uncertainty of ROE findings, relative to the baseline. Such reductions in findings and increases in clarity may reduce compliance costs or increase the efficiency with which compliance costs are expended by FDIC-supervised IDIs to respond to ROE findings. The FDIC does not have the information necessary to quantify such potential indirect benefits.

Negative feedback from regulators during the examination process may discourage FDIC-supervised IDIs from taking part in activity and could result in reduced provision of banking products and services. To the extent that matters requiring the attention of an institution's board of directors and management are currently identified and used in a way that raises potential chilling effects, the proposal could result in fewer such effects relative to the baseline. A reduction in chilling effects could enable FDIC-supervised IDIs to provide financial products and services to entities that they would not have otherwise. The FDIC does not have the data necessary to quantify this potential benefit. Moreover, it is also possible that under the proposal risks to IDIs and risks of IDI failures could decrease significantly, because under the proposal IDI management and examiners would prioritize the identification and remediation of issues that could result in material financial loss to IDIs.

If adopted the proposed rule may reduce the volume of examination findings communicated to FDIC-supervised IDIs and this could pose certain indirect costs. To the extent that the proposed rule, if adopted, delayed the identification of material risks to the financial condition of an IDI, such entities could incur higher costs to resolve such issues, associated loses, and in extreme cases, failure. However, as previously discussed, the FDIC believe that the proposed definition of unsafe or unsound better practice prioritizes the identification and communication of such risks. Therefore, the FDIC believes that such costs are unlikely to be substantial.

FDIC cannot quantitatively estimate the indirect effects that FDIC-supervised IDIs are likely to incur if the proposed rule were adopted. However, assuming that all FDIC-supervised IDIs are subject to a bank examination once every 18 months the proposed rule would only need to pose $53,419 in indirect benefits, on average, to FDIC-supervised IDIs to result in an annual economic effect in excess of $100 million.[71] Based on the preceding analysis the FDIC believes that the proposed regulatory action could plausibly result in an annual effect on the economy of $100 million or more. However, the FDIC does not believe that the proposed rule 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.

Serious Inconsistency

The FDIC does not believe the proposed regulatory action would create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Currently, the FDIC and OCC use distinct terminology to identify and communicate deficiencies that rise to the level of a matter that requires attention from an institution's board of directors and management. The agencies are proposing to jointly revise the terminology and thresholds for the issuance of MRAs in their supervisory programs. Therefore, the FDIC believes that this regulatory action would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, but rather would remove existing inconsistencies.

Material Alternation

The FDIC does not believe the proposed regulatory action would materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. The proposed regulatory action does nothing to alter entitlements, grants, user fees, or loan programs or the rights and obligations of the recipients of such programs.

Novel Legal or Policy Issues

The FDIC does not believe the proposed regulatory action would raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. The FDIC has experience in conducting examinations of the safety and soundness of IDIs and communicating their findings in a variety of ways since its inception. Further, IDIs have an existing mandate to operate in a safe and sound manner.[72] Therefore, this proposed regulatory action does not raise any novel legal or policy issues.

Executive Order 14192

Executive Order 14192, titled ''Unleashing Prosperity Through Deregulation,'' requires that an agency, unless prohibited by law, identify at least 10 existing regulations to be repealed when the agency publicly proposes for notice and comment or otherwise promulgates a new regulation with total costs greater than zero. Executive Order 14192 further requires that new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least ten prior regulations. The agencies anticipate that the proposed rule will not be a regulatory action for purposes of Executive Order 14192.

List of Subjects

12 CFR Part 4

Administrative practice and procedure, Freedom of information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

12 CFR Part 305

Banks, Banking, Organization and functions (Government agencies).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the preamble, the OCC proposes to amend chapter I of title 12 of the Code of Federal Regulations as follows:

[71] $100,000,000/(2,808/1.5) = $53,418.80.

[72] 12 CFR part 364 establishes standards for safety and soundness for supervised institutions.

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

■ 1. Revise the authority citation for part 4 to read as follows:

Authority: 5 U.S.C. 301, 552; 12 U.S.C. 1, 93a, 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464, 1467a, 1817(a), 1818, 1820, 1821, 1831m, 1831p–1, 1831o, 1833e, 1867, 1951 *et seq.,* 2601 *et seq.,* 2801 *et seq.,* 2901 *et seq.,* 3101 *et seq.,* 3102(b), 3401 *et seq.,* 3501(c)(1)(C), 5321, 5412, 5414; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510; E.O. 12600 (3 CFR, 1987 Comp., p. 235).

■ 2. Add subpart G, consisting of §§ 4.91 and 4.92, to read as follows:

Subpart G—Enforcement and Supervision Standards

Sec.
4.91 [Reserved]
4.92 Enforcement and supervisory standards.

§ 4.91 [Reserved]

§ 4.92 Enforcement and supervisory standards.

(a) *Unsafe or unsound practices.* For purposes of the OCC's supervisory and enforcement activities under 12 U.S.C. 1818, an ''unsafe or unsound practice'' is a practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that:

(1) Is contrary to generally accepted standards of prudent operation; and

(2)(i) If continued, is likely to—

(A) Materially harm the financial condition of the institution; or

(B) Present a material risk of loss to the Deposit Insurance Fund; or

(ii) Materially harmed the financial condition of the institution.

(b) *Matters requiring attention.* The OCC may only issue a matter requiring attention to an institution for a practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that:

(1)(i) Is contrary to generally accepted standards of prudent operation; and

(ii)(A) If continued, could reasonably be expected to, under current or reasonably foreseeable conditions,

(*1*) Materially harm the financial condition of the institution; or

(*2*) Present a material risk of loss to the Deposit Insurance Fund; or

(B) Materially harmed the financial condition of the institution; or

(2) Is an actual violation of a banking or banking-related law or regulation.

(c) *Clarification regarding supervisory observations.* Nothing in paragraph (b) of this section prevents the OCC from communicating a suggestion or observation orally or in writing to enhance an institution's policies, practices, condition, or operations as long as the communication is not, and is not treated by the OCC in a manner similar to, a matter requiring attention.

(d) *Tailored application required.* The OCC will tailor its supervisory and enforcement actions under 12 U.S.C. 1818 and issuance of matters requiring attention based on the capital structure, riskiness, complexity, activities, asset size and any financial risk-related factor that the OCC deems appropriate. Tailoring required by this paragraph (d) includes tailoring with respect to the requirements or expectations set forth in such actions as well as whether, and the extent to which, such actions are taken.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set out in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to add part 305 to title 12 of the Code of Federal Regulations as follows:

■ 3. Add part 305, consisting of § 305.1, to read as follows:

PART 305—ENFORCEMENT AND SUPERVISION STANDARDS

Sec.
305.1 Enforcement and supervision standards.

Authority: 12 U.S.C. 1818, 1819(a) (Seventh, Eighth, and Tenth), 1831p–1.

§ 305.1 Enforcement and supervision standards.

(a) *Unsafe or unsound practices.* For purposes of the FDIC's supervisory and enforcement activities under 12 U.S.C. 1818, an ''unsafe or unsound practice'' is a practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that:

(1) Is contrary to generally accepted standards of prudent operation; and

(2)(i) If continued, is likely to—

(A) Materially harm the financial condition of the institution; or

(B) Present a material risk of loss to the Deposit Insurance Fund; or

(ii) Materially harmed the financial condition of the institution.

(b) *Matters requiring attention.* The FDIC may only issue a matter requiring attention to an institution for a practice, act, or failure to act, alone or together with one or more other practices, acts, or failures to act, that:

(1)(i) Is contrary to generally accepted standards of prudent operation; and

(ii)(A) If continued, could reasonably be expected to, under current or reasonably foreseeable conditions,

(*1*) Materially harm the financial condition of the institution; or

(*2*) Present a material risk of loss to the Deposit Insurance Fund; or

(B) Materially harmed the financial condition of the institution; or

(2) Is an actual violation of a banking or banking-related law or regulation.

(c) *Clarification regarding supervisory observations.* Nothing in paragraph (b) of this section prevents the FDIC from communicating a suggestion or observation, orally or in writing, to enhance an institution's policies, practices, condition, or operations as long as the communication is not, and is not treated by the FDIC in a manner similar to, a matter requiring attention.

(d) *Tailored application required.* The FDIC will tailor its supervisory and enforcement actions under 12 U.S.C. 1818 and issuance of matters requiring attention based on the capital structure, riskiness, complexity, activities, asset size and any financial risk-related factor that the FDIC deems appropriate. Tailoring required by this paragraph (d) includes tailoring with respect to the requirements or expectations set forth in such actions as well as whether, and the extent to which, such actions are taken.

Jonathan V. Gould,

Comptroller of the Currency.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on October 7, 2025.

Jennifer M. Jones,

Deputy Executive Secretary.

[FR Doc. 2025–19711 Filed 10–29–25; 8:45 am]

BILLING CODE 4810–33–6714–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

14 CFR Part 399

[DOT–OST–2025–0633]

RIN 2105–AF38

Procedures in Regulating and Enforcing Unfair or Deceptive Practices

AGENCY: Office of the Secretary of Transportation (OST), U.S. Department of Transportation (DOT or Department).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The Department proposes to reinstate the hearing procedures used when conducting a discretionary rulemaking action under its authority to regulate unfair or deceptive practices in air transportation or the sale of air transportation. This notice of proposed rulemaking (NPRM) also seeks comment on the rescission of a final rule published by the Department.

DATES: Comments must be received by December 1, 2025. To the extent practicable, DOT will consider late-filed comments.

ADDRESSES: You may submit comments by any of the following methods (please choose only one of the ways listed):

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management System; U.S. Department of Transportation, Docket Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Mailed comments must be received by the close of the comment period.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number (DOT–OST–2025–0633) or the Regulation Identifier Number (RIN) for the rulemaking at the beginning of your comment. All comments received will be posted to *https://www.regulations.gov,* including any personal information provided.

Privacy Act: Anyone can search the comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For information on DOT's compliance with the Privacy Act, visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents and comments received, go to *https://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are public records; they are publicly displayed exactly as received, and will not be deleted, modified, or redacted. Comments may be submitted anonymously. Follow the search instructions on *https://www.regulations.gov* to view public comments.

FOR FURTHER INFORMATION CONTACT: Robert Gorman, Beth Brodsky, or Blane Workie, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590; 202–366–9342; 202–366–7152 (fax); *robert.gorman@dot.gov, beth.brodsky@dot.gov,* or *blane.workie@dot.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

A. The Department's Unfair or Deceptive Practices Statute

The Department has authority under 49 U.S.C. 41712 (Section 41712) to investigate and decide whether an air carrier, foreign air carrier, or ticket agent has been or is engaged in an unfair or deceptive practice in air transportation or the sale of air transportation. Under Section 41712, after notice and an opportunity for a hearing, the Department has authority to order the air carrier, foreign air carrier, or ticket agent to stop the unfair or deceptive practice. On its face, Section 41712 provides adjudicatory authority to the Department to issue case-by-case orders to stop a particular practice.

The Department can issue regulations to declare a practice to be unfair or deceptive under Section 41712 using rulemaking authority found in 49 U.S.C. 40113 (Section 40113), which states that the Department may take action, including prescribing regulations, it considers necessary to carry out Part A of Subtitle VII of Title 49 of the U.S. Code, which includes Section 41712. The Department's authority to issue regulations under Section 41712 is limited to declaring a practice to be unfair or deceptive after notice and an opportunity for a hearing. The Department's rulemaking authority under Section 41712 does not extend beyond that application. Pursuant to another statute, 49 U.S.C. 46301, the Department has authority to issue civil penalties for violations of Section 41712 or for any regulation or order issued under the authority of Section 41712.

To avoid misapplication of legal authority under Section 41712, the Department offers additional clarification. When Congress has provided the Department with explicit rulemaking authority outside of Section 41712 or Section 40113, then the Department follows that direction. However, when Congress has not provided the Department with explicit rulemaking authority, and the Department seeks to declare a practice to be unfair or deceptive, the following procedures must be followed:

1. *Enforcement:* The Department may investigate an air carrier, foreign air carrier, or ticket agent to determine whether that individual air carrier, foreign air carrier, or ticket agent is engaged in an unfair or deceptive practice in air transportation or the sale of air transportation. The Department must use the definitions of unfair or deceptive, and the procedures proposed in this rulemaking, to declare the practice to be unfair or deceptive. If, after notice and an opportunity for a hearing, the Department finds the practice to be unfair or deceptive, the Department may order the air carrier, foreign air carrier, or ticket agent to stop the practice. The Department may issue civil penalties, as appropriate.

2. *Rulemaking:* Trivial or speculative harms are insufficient to initiate a rulemaking. The Department may initiate a rulemaking only if it has evidence to suggest that an unfair or deceptive practice may be occurring. The Department investigates the practice, gathers data, and formulates a body of evidence demonstrating that a problem exists in the market. The Department issues a notice of proposed rulemaking using the definitions and procedures proposed in this rulemaking, to declare the practice to be unfair or deceptive. If, after notice and an opportunity for a hearing, the Department finds that the practice is unfair or deceptive, the Department may issue a final rule declaring what the unfair or deceptive practice is. After the final rule is effective, the Department may take enforcement action against an air carrier, foreign air carrier, or ticket agent for violation of the regulation following the enforcement procedures proposed in this rulemaking.

The Department is analyzing its past use of Section 41712 under the direction of Executive Order 14219, ''Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative'' (February 19, 2025). This Executive Order instructs the executive branch to direct its enforcement resources to regulations squarely authorized by constitutional Federal statutes, and it requires the Department to review its regulations to identify those that are based on anything other than the best reading of its underlying statutory authority. The Department finds that the best reading of its

statutory authorities allows the Department first to investigate and then to declare a practice to be unfair or deceptive following the procedures that would be codified in the regulation proposed today. The Department's rulemaking authority is therefore limited to a declaration of what is unfair or deceptive when supported by evidence after notice and an opportunity for a hearing.

This best reading of the statute is consistent with longstanding principles found in Executive Order 12866, as well as DOT Order 2100.6B, which both contemplate that regulations be supported by statutory authority, and direct the Department to consider whether a specific problem exists that must be addressed through rulemaking. Speculative harms do not support a need to regulate, nor do strained or unduly broad readings of statutory authorities.

B. The Department's 2020 Hearing Provisions for Discretionary Aviation Consumer Protection Rulemakings and Subsequent Revisions to the Procedures in 2022

On December 20, 2020, the Department published in the **Federal Register** a final rule titled: ''Defining Unfair or Deceptive Practices'' (2020 UDP Rule).[1] The 2020 UDP Rule was intended to provide regulated entities and other stakeholders with greater clarity about the Department's enforcement and regulatory processes with respect to aviation consumer protection actions under Section 41712. Among other things, it set forth procedures the Department would use when conducting future discretionary rulemaking actions under the authority of Section 41712. Those procedures were revised meaningfully by a final rule the Department published on February 2, 2022 titled: ''Procedures in Regulating Unfair or Deceptive Practices'' (2022 UDP Rule).[2] This NPRM proposes to rescind the 2022 UDP Rule and to reinstate the procedures for discretionary rulemaking hearings set forth in the 2020 UDP Rule.

In addition, the 2020 UDP Rule defined the terms ''unfair'' and ''deceptive'' for purposes of Section 41712. The definitions were modeled after Federal Trade Commission (FTC) precedent; they also reflect the Department's longstanding interpretation of those terms. Those definitions remain unchanged since DOT published the 2020 UDP Rule, and there are no modifications to them proposed in this NPRM. However, without going through notice and comment, on August 29, 2022, the Department expounded upon these definitions in an unnecessary and potentially confusing interpretative rulemaking titled: ''Guidance Regarding Interpretation of Unfair or Deceptive Practices'' (Guidance).[3] The Department will rescind the Guidance at a later date.

C. The 2023 Clarification of Formal Enforcement Procedures for Unfair or Deceptive Practices

The Department issued another final rule on June 16, 2023, titled: ''Clarification of Formal Enforcement Procedures for Unfair or Deceptive Practices'' (Clarification).[4] This final rule was intended to ''provide a more complete statement of formal enforcement procedures available under existing DOT authority'' than was provided in the 2020 UDP Rule. At that time, the Department determined it was necessary to clarify, when taking enforcement action, that DOT is not limited to initiating a proceeding before an administrative law judge, but also has the option to bring a civil action in a United States District Court. The Department now proposes to rescind the regulations issued in that rulemaking because it was done without notice and comment and because it is unnecessary. The Department's authority to bring an action in the United States District Court to enforce Section 41712 is grounded in statute, settled, and does need to be clarified in regulation.

On April 3, 2025, the Department issued a Request for Information (RFI), titled: ''Ensuring Lawful Regulation; Reducing Regulation and Controlling Regulatory Costs.'' [5] The Department solicited information to identify regulations, guidance documents, paperwork, and other administrative burdens that can be modified or repealed, consistent with the law. In response to the RFI, Airlines for America, the International Air Transport Association, United Airlines, and the Reason Foundation recommended that the Department take action to reinstate the 2020 UDP hearing procedures, rescind the 2022 UDP Rule, and rescind the 2023 Guidance.

II. Proposal To Reinstate the 2020 UDP Rule's Hearing Procedures

The 2022 UDP Rule made the following six revisions to the hearing procedures used for the Department's discretionary aviation consumer protection rulemakings: (1) changed the standard for when the General Counsel should grant a hearing request to an amorphous ''public interest'' standard; (2) changed the level of proof necessary for granting a public hearing from ''plausible'' to ''credible and convincing;'' (3) added a requirement for the Department to provide a rationale for granting a petition rather than only for denying a petition; (4) eliminated the requirement for a neutral hearing officer, giving the General Counsel discretion to appoint an adjudicator (who need not be neutral) from within or outside the Department, and granted the adjudicator more discretion to decide when and how testimony would be presented at a hearing; (5) eliminated the requirement that the hearing officer issue proposed findings on disputed issues of fact; and (6) changed the closing procedures to include an opportunity for all interested parties to file statements or comments in the docket instead of only the parties that participated in the hearing.

These revisions were promulgated in response to Executive Orders that have since been rescinded and are inconsistent with current Department and Administration policy. In revising the procedures in 2022, the Department found a need to ''streamline'' these regulations to ensure that consumer protection rulemakings were not ''unduly delayed,'' noting that ''it is important to balance the need for robust public participation with the need for procedures that provide the Department with enough flexibility to ensure important rulemakings are not bogged down by overly prescriptive procedural constraints.'' The Department has reconsidered these justifications for the 2022 rulemaking and supports the recodification of the 2020 procedures. The Department finds that any delay associated with following the 2020 procedures for applicable discretionary rulemakings would not only be minimal, based on past practice with these procedures, but also would be outweighed by the Department's

[1] *See* U.S. Department of Transportation, Final Rule, ''Defining Unfair or Deceptive Practices,'' 85 FR 78707 (RIN 2105–AE72) (Docket DOT–OST–2019–0182) (Dec. 7, 2020).

[2] *See* U.S. Department of Transportation, Final Rule, ''Procedures in Regulating Unfair or Deceptive Practices,'' 87 FR 5655 (RIN 2105–AF03) (Docket DOT–OST–2021–0142) (Feb. 2, 2022).

[3] *See* U.S. Department of Transportation, Guidance Document, ''Guidance Regarding Interpretation of Unfair or Deceptive Practices,'' 87 FR 52677 (RIN 2105–ZA18) (Docket DOT–OST–2019–0182) (Aug. 29, 2022).

[4] *See* U.S. Department of Transportation, Final Rule, ''Clarification of Formal Enforcement Procedures for Unfair or Deceptive Practices,'' 88 FR 39352 (RIN 2105–AF18) (DOT–OST–2021–0142) (June 16, 2023).

[5] *See* U.S. Department of Transportation, Request for Information, ''Ensuring Lawful Regulation; Reducing Regulation and Controlling Regulatory Costs,'' 90 FR 14593 (Docket DOT–OST–2025–0026) (April 3, 2025).

development of higher-quality rulemakings and enforcement actions. The Department produces its best work when it is informed by robust public input, the best available data, and sound law and economics, and these procedures increase opportunities to receive those essential building blocks for good governance that would strengthen the overall quality and fairness of the Department's administrative actions.

In addition, the 2022 revisions gave the Department too much discretion and authority for granting and overseeing hearings, imposed too onerous a standard on petitioners requesting a hearing, and did not provide regulated entities and other stakeholders with sufficient clarity, certainty, transparency, or due process in connection with the Department's aviation consumer protection rulemaking actions. This rulemaking, therefore, proposes to reinstate the hearing procedures established by the 2020 UDP Rule and to require the Department to follow those procedures when engaging in discretionary aviation consumer protection rulemakings issued under Section 41712 that are not defined as high-impact or economically significant within the meaning of the Department's regulatory procedures. Any such high-impact or economically significant rulemakings would be subject to special procedures outlined in section 12 of DOT Order 2100.6B.[6] These procedures are proposed to be reinstated in a separate pending rulemaking action.[7] If adopted, these reinstated hearing procedures would increase transparency, provide for more robust public participation, and strengthen the overall quality and fairness of the Department's administrative actions.

1. Hearing Procedures

Under this proposal, the reinstated UDP hearing procedures would permit any interested party to file a petition for an evidentiary hearing when the Department proposes a new discretionary rule declaring a practice by airlines or ticket agents to be unfair or deceptive. The petition must be directed to the attention of the General Counsel and must be filed before the close of the comment period on the proposed rule.

To obtain a hearing, the requesting party must make a plausible showing that: (1) the proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issues that are genuinely in dispute or that may not satisfy the requirements of the Information Quality Act; (2) the ordinary public comment process is unlikely to provide an adequate examination of the issues to permit a fully informed judgment; and (3) the resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule. Even if the petitioner establishes these elements, the General Counsel may still deny the petition if the hearing would not advance consideration of the proposed rule. If the General Counsel denies a petition, the denial must be accompanied by a detailed statement of reasons.

The Department notes, in the 2020 UDP Rule, that a petition for a hearing may be denied if the General Counsel determines that a ''hearing would unreasonably delay completion of the rulemaking.'' [8] The provision was retained in the 2022 UDP Rule.[9] However, the Department now proposes to remove this factor because it is duplicative of the preceding provision that allows the General Counsel to deny a hearing if it would ''not advance the consideration of the proposed rule,'' which could involve considerations of timing. Nevertheless, the Department seeks comment on the removal of this factor and whether the public finds any value in its retention.

The proposed procedures also provide that the General Counsel must appoint a neutral officer to preside over the hearing and must allow a reasonable opportunity to question the presenters. After the hearing is closed, the neutral officer would place minutes of the meeting in the docket, along with proposed findings of fact on the disputed issues. Interested parties who participated in the hearing would be given the opportunity to file statements of agreement or objection to the proposed findings. After the hearing, the General Counsel would consider the record of the hearing, along with the neutral officer's findings, and determine whether: (1) to terminate the proposed rulemaking; (2) to modify the proposed rule by filing a new or supplemental notice of proposed rulemaking; or (3) to finalize the rule without material changes. Any of these choices must be accompanied by a notice in the **Federal Register** explaining the basis for the decision.

The Department also proposes to modify the procedures further by adding a provision granting an opportunity to appeal to the Secretary for parties aggrieved by the General Counsel's denial of a petition.

2. Hearing Procedures Rationale

The Department believes these hearing procedures are consistent with Section 41712, which requires the Department to provide notice and an opportunity for a hearing before finding that a regulated entity is engaged in an unfair or deceptive practice. The hearing procedures the Department proposes to reinstate would be helpful in cases where the Department's proposed rulemaking may be premised on complex or disputed issues of fact. Importantly, the traditional notice-and-comment procedures of the Administrative Procedure Act remain the default process. Thus, a hearing may be granted only if an interested party shows that the traditional notice-and-comment process is inadequate to examine the issues to permit a fully informed judgment. While the hearing procedures may add time to the overall rulemaking process in certain circumstances, as written, they would promote fairness, due process, and well-informed rulemaking, without unduly delaying the proceeding itself.

III. Rescission of Other Rules

The Department also proposes the rescission of the 2023 Clarification. The Department promulgated the 2023 Clarification without going through formal notice and comment, and the Clarification is also unnecessary. The Department's authority to bring an action in the United States District Court to enforce Section 41712 is grounded in statute, settled, and does not need to be clarified.

Finally, the Department proposes to consolidate the provisions currently found at 14 CFR 399.75(a) and (c). Section 399.75(a) requires the Department to use the definitions of the terms ''unfair'' and ''deceptive'' found in section 399.79. Section 399.75(c) requires the Department to articulate the basis for concluding that the practice is unfair or deceptive to consumers using those definitions. For the sake of regulatory efficiency, the Department proposes to consolidate these two sections into one regulation at section

[6] See U.S. Department of Transportation, DOT Order 2100.6B, ''Policies and Procedures for Rulemakings,'' *available at https://www.transportation.gov/regulations/dot-order-21006b-rulemaking-and-guidance-procedures* (Mar. 10, 2025).

[7] *See* U.S. Department of Transportation, Notice of Proposed Rulemaking (NPRM), ''Administrative Rulemaking, Guidance, and Enforcement Procedures,'' 90 FR 20956, 20967 (RIN 2105–AF32) (Docket DOT–OST–2025–0007) (May 16, 2025) (*see* proposed section 5.17(a)). The comment period for this NPRM closed on June 16, 2025.

[8] *See* 14 CFR 399.75(b)(3)(ii) as finalized in the 2020 UDP Rule.

[9] *See* 14 CFR 399.75(b)(2)(v) as finalized in the 2022 UDP Rule.

399.75(a), but the requirement is the same: First, the Department must employ the definitions found in section 399.79 when declaring a practice to be unfair or deceptive. Second, the Department also must explain in the rulemaking document that declares a practice to be an unfair or deceptive practice how that practice satisfies the definitional prongs of unfairness and deception found in section 399.79. The Department seeks comment on whether the revised language sufficiently communicates these two requirements.

V. Administrative Procedure

Under the Administrative Procedure Act, an agency may waive the normal notice and comment procedures if the action is a rule of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(3)(A). The Department did not request comment before publishing the 2022 UDP Rule, stating that the rule ''revises only internal processes applicable to the Department's administrative procedures . . . for which notice and comment are not required.'' [10] However, because this NPRM seeks to reinstate procedures from the 2020 UDP Rule that confer express rights on regulated parties and other stakeholders, the Department seeks public comment on this proposal. The Department also seeks public comment on rescinding the Clarification.

Before these proposed policies and procedures are adopted as final regulations, consideration will be given to comments that are submitted timely to the Department as prescribed in the preamble under the **ADDRESSES** section. The Department seeks comment on all aspects of this proposal. Any comments submitted will be made available at *https://www.regulations.gov* or upon request.

VI. Regulatory Analyses and Notices

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

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. This proposed rule primarily involves agency procedure and interpretation. Adopting enhanced procedures for future rulemaking activities would help to ensure that the activities are rooted in fairness, due process, and an adequate factual foundation.

Under this proposed rule, future discretionary rulemakings could be subject to a hearing procedure. This proposed rule allows interested parties to request a hearing when the Department proposes a rule to classify a practice as unfair or deceptive; when the issuance of the NPRM raises one or more disputed scientific, technical, economic, or other complex factual issues; or when the NPRM may not satisfy the requirements of the Information Quality Act. Allowing interested parties an opportunity for a hearing ensures that they can test the information upon which discretionary consumer protection regulations rely. However, following this proposal's requirements to provide a sufficient factual basis to support an ''unfair'' and ''deceptive'' finding should reduce the need for the Department to hold such hearings.

Nevertheless, requests for hearings are expected to occur occasionally. While the Department lacks data that would allow it to distinguish the costs and time of conducting the hearings from the costs of conducting its normal business operations, the Department believes that any incremental costs and time would be small relative to the baseline scenario in which the Department did not enact the rule. Previous discretionary rulemakings involving unfair or deceptive practices in aviation consumer protection have attracted substantial interest from consumer advocates, airline industry advocates, and the general public. The Department engaged with these interested parties without the benefit of a formal process, and the engagements required investments of time and resources by the Department and interested parties. Because these engagements were informal and with uncertain scopes, they were not as efficient as would be expected under a more formal process for interested parties as would be the case under this proposed rule. Without a formal process, parties tend to overinvest in preparation, incurring unnecessary costs, or underinvest, leading to additional engagements and administrative costs. For future rulemakings, establishing formal hearing procedures may reduce costs and time by increasing certainty about opportunities for engagement.

The Department has experience using hearing procedures to supplement traditional notice-and-comment rulemaking.[11] The hearing procedures would provide consistency in the Department's exercise of its UDP authority by mirroring the statute's hearing requirement to ensure rulemakings enacted under the same authority ensure due process and are grounded in fairness and supported by an adequate factual foundation. The Department believes that its experience with hearings would prevent it from leading to excessive delays in issuing aviation consumer protection rules.

This proposed rule would not impose any more than *de minimis* regulatory costs. The proposal would provide an additional mechanism for industry to provide input to the Department on its discretionary aviation consumer protection rulemakings. Private industry should not experience more than minimal additional costs relative to the status quo because it already engages in significant information exchange with the Department. Industry has the option of continuing to use historical mechanisms for providing input to discretionary aviation consumer protection and is not required to make use of the alternatives set forth in this rule. The Department should not experience significant additional costs because it has considerable experience conducting analysis in support of aviation consumer protection rules as well as hearings analogous to those in this rule. Such efforts are consistent with the Department's normal business operations, and any additional resources needs could be accommodated through a simple and temporary realignment of internal resources.

B. Executive Order 14192 (Unleashing Prosperity Through Deregulation)

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 14192 (''Unleashing Prosperity Through Deregulation''). This proposed rule is not expected to be an Executive Order 14192 regulatory action because this proposed rule is not significant under Executive Order 12866.

[10] *See* 2022 UDP Rule, 87 FR at 5657.

[11] *See, e.g.,* Recording of the Public Meeting on the Airline Ticket Refunds and Consumer Protections NPRM, *available at https://www.transportation.gov/airconsumer/Airline_Refund_NPRM/March21_Public_Hearing_Recording* (Mar. 21, 2023); Recording of the Public Meeting on the Enhancing Transparency of Airline Ancillary Service Fees NPRM, *available at https://www.transportation.gov/airconsumer/AirlineAncillaryFeeNPRM/March30_Public_Hearing_Recording* (Mar. 30, 2023); and Accessible Lavatories on Single-Aisle Aircraft: Part 1; Reopening of Comment Period and Public Meeting, *available at https://www.federalregister.gov/documents/2021/11/19/2021-25000/accessible-lavatories-on-single-aisle-aircraft-part-1-reopening-of-comment-period-and-public-meeting* (Dec. 16, 2021).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. A direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft (*i.e.,* aircraft with up to 60 seats/18,000-pound payload capacity). *See* 14 CFR 399.73. The Department has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities. However, the Department invites comment on the potential impact of this rulemaking on small entities.

D. Executive Order 13132 (Federalism)

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). The proposed rule does not include any provision that: (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49 U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

E. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13175 do not apply.

F. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that DOT consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. The DOT has determined there are no new information collection requirements associated with this proposed rule.

G. Unfunded Mandates Reform Act

The Department has determined the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

H. National Environmental Policy Act

The Department has analyzed the environmental impacts of this proposed rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined it is categorically excluded pursuant to DOT Order 5610.1D, ''Procedures for Considering Environmental Impacts'' (July 1, 2025). Categorical exclusions (CEs) are categories of actions that the agency has determined normally do not significantly affect the quality of the human environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). *See* DOT Order 5610.1D § 9. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* § 9(b). The Department's Operating Administrations (OAs) may apply CEs established in another OA's procedures. *Id.* § 9(f). To do so, the Operating Administration ''must evaluate the action for extraordinary circumstances identified in the OA procedures in which the CE is established to determine if a normally excluded action may have a significant impact and coordinate with the originating OA to ensure that the CE is being applied correctly.'' *Id.* This rulemaking, which sets procedures for departmental unfair or deceptive practices rulemaking actions, is categorically excluded pursuant to 23 CFR 771.117(c)(20): ''Promulgation of rules, regulations, and directives.'' The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

I. Privacy Act

Anyone may search the electronic form of all comments received into any of OST's dockets by the name of the individual submitting the comment or signing the comment if submitted on behalf of an association, business, labor union, or any other entity. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 at 65 FR 19477–8.

J. Statutory/Legal Authority for This Rulemaking

This rulemaking is issued under the authority of 49 U.S.C. 40113(a), which grants the Secretary the authority to take action the Secretary considers necessary to carry out 49 U.S.C. Subtitle VII (Aviation Programs), including conducting investigations, prescribing regulations, standards, and procedures, and issuing orders.

K. Regulation Identifier Number

A Regulation Identifier Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in Spring and Fall of each year. The RIN set forth in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 14 CFR Part 399

Airfare advertising, Consumer protection, Rulemaking proceedings, Unfair or deceptive practices.

For the reasons set forth in the preamble, the Department of Transportation proposes to amend 14 CFR part 399 as follows:

PART 399—STATEMENTS OF GENERAL POLICY

■ 1. The authority citation for Part 399 is revised to read as follows:

Authority: 49 U.S.C. 41712, 40113(a).

Subpart F—Policies Relating to Rulemaking Proceedings

■ 2. Section 399.75 of Subpart F is amended to read as follows:

§ 399.75 Rulemakings relating to unfair or deceptive practices.

(a) *General.* Unless specifically required by statute, the Department shall only issue a proposed or final regulation under the authority of 49 U.S.C. 41712(a) if the Department articulates the basis for declaring a practice in air transportation or the sale of air transportation to be unfair or deceptive to consumers, employing the definitions of ''unfair'' and ''deceptive'' set forth in § 399.79.

(b) *Procedural requirements.* Except as provided in paragraph (d), when issuing a proposed regulation to determine a practice in air transportation or the sale of air transportation to be unfair or deceptive to consumers under the authority of 49 U.S.C. 41712(a), the Department shall

adhere to the following procedural requirements:

(1) *Request for a hearing.* Following publication of a proposed regulation, and before the close of the comment period, any interested party may file in the rulemaking docket a petition, directed to the General Counsel, to hold a hearing on the proposed regulation. The General Counsel shall determine whether to grant the petition in accordance with the requirements of this section.

(2) *Grant of petition for hearing.* Except as provided in paragraph (b)(3) of this section, the petition shall be granted if the petitioner makes a plausible *prima facie* showing that:

(i) The proposed rule depends on conclusions concerning one or more specific scientific, technical, economic, or other factual issue that is genuinely in dispute or that may not satisfy the requirements of the Information Quality Act;

(ii) The ordinary public comment process is unlikely to provide an adequate examination of the issues to permit a fully informed judgment; and

(iii) The resolution of the disputed factual issues would likely have a material effect on the costs and benefits of the proposed rule.

(3) *Denial of petition for hearing.* A petition meeting the requirements of paragraph (b)(2) of this section may be denied if the General Counsel determines the requested hearing would not advance the consideration of the proposed rule and the General Counsel's ability to make the rulemaking determinations required by this section.

(4) *Explanation and appeal of denial.* If a petition is denied in whole or in part, the General Counsel shall include a detailed explanation of the factual basis for the denial, including findings on each of the relevant factors identified in paragraph (b)(2) or (3) of this section. The General Counsel's denial of a petition, in whole or in part, may be appealed by the petitioner to the Secretary within 30 days of the date on which the General Counsel's explanation of the factual basis for the denial is issued.

(5) *Hearing notice.* If the General Counsel grants the petition, or if the denial of a petition is reversed on appeal to the Secretary, the General Counsel shall publish notification of the hearing in the **Federal Register**. The document shall specify the proposed rule at issue and the specific factual issues to be considered at the hearing. The scope of the hearing shall be limited to the factual issues specified in the notice.

(6) *Hearing process.* (i) A hearing under this section shall be conducted using procedures approved by the General Counsel, and interested parties shall have a reasonable opportunity to participate in the hearing through the presentation of testimony and written submissions.

(ii) The General Counsel shall arrange for a neutral officer to preside over the hearing and shall provide a reasonable opportunity to question the presenters.

(iii) After the hearing and after the record of the hearing is closed, the hearing officer shall place in the docket minutes of the hearing with sufficient detail as to reflect fully the evidence and arguments presented on the issues, along with proposed findings addressing the disputed issues of fact identified in the hearing notice.

(iv) Interested parties who participated in the hearing shall be given an opportunity to file statements of agreement or objection in response to the hearing officer's proposed findings. The complete record of the hearing shall be made part of the rulemaking record.

(7) *Actions following hearing.* (i) Following the completion of the hearing process, the General Counsel shall consider the record of the hearing, including the hearing officer's proposed findings, and shall make a reasoned determination whether to terminate the rulemaking, to proceed with the rulemaking as proposed, or to modify the proposed rule.

(ii) If the General Counsel decides to terminate the rulemaking, the General Counsel shall publish a document in the **Federal Register** announcing the decision and explaining the reasons for the decision.

(iii) If the General Counsel decides to finalize the proposed rule without material modifications, the General Counsel shall explain the reasons for the decision and provide responses to the hearing record in the preamble to the final rule.

(iv) If the General Counsel decides to modify the proposed rule in material respects, the General Counsel shall publish a new or supplemental notice of proposed rulemaking in the **Federal Register** explaining the General Counsel's responses to and analysis of the hearing record, setting forth the modifications to the proposed rule, and providing additional reasonable opportunity for public comment on the proposed modified rule.

(8) *Interagency review process.* The hearing procedures under this paragraph (b)(8) shall not impede or interfere with the interagency review process of the Office of Information and Regulatory Affairs for the proposed rulemaking.

(c) When issuing a proposed regulation under this section that is defined as high impact or economically significant within the meaning of DOT Order 2100.6B or 49 CFR part 5, the Department shall follow the procedural requirements set forth therein.

* * * * *

Subpart G—Policies Relating to Enforcement

■ 3. Section 399.79 is amended by revising the paragraph (f) heading and deleting paragraph (g) to read as follows:

(f) *Formal enforcement proceedings before an administrative law judge.*

* * * * *

Issued in Washington, DC, under authority delegated in 49 CFR part 1.27(n):

Gregory Zerzan,

General Counsel.

[FR Doc. 2025–19692 Filed 10–29–25; 8:45 am]

BILLING CODE 4910–9X–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2023–0348; FRL–11133–01–R10]

Air Plan Approval; AK; Regional Haze Plan for the Second Implementation Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the Alaska regional haze plan for the second implementation period. Alaska submitted the plan to address applicable requirements under the Clean Air Act and the EPA's Regional Haze Rule.

DATES: Written comments must be received on or before December 1, 2025.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2023–0348 at *https://www.regulations.gov*. For comments submitted at *regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments may not be edited or removed from *regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information or other information the disclosure of which is restricted by statute.

Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about confidential business information or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Kristin Hall, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553–6357 or *hall.kristin@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, the use of ''we'' and ''our'' means ''the EPA.''

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I. What action is the EPA proposing?

The EPA is proposing to approve the Alaska regional haze plan for the second implementation period as meeting the Regional Haze Rule (RHR) requirements of 40 CFR 51.308(f)(1) through (6), (g)(1) through (5), and (i). The Alaska Department of Environmental Conservation (DEC) submitted the regional haze plan on July 25, 2022, as a State Implementation Plan (SIP) revision, and clarified aspects of the submission on October 6, 2025. In addition, as requested by the Alaska DEC in the submission, we are proposing to approve and incorporate by reference into the Alaska SIP at 40 CFR 52.70(c), two new regulatory provisions of Alaska Administrative Code Title 18 Environmental Conservation, Chapter 50 Air Quality Control (18 AAC 50), specifically, 18 AAC 50.025 and 18 AAC 50.265, State effective August 21, 2022. The EPA is proposing this action pursuant to Clean Air Act (CAA) sections 110 and 169A.

II. Background and Requirements for Regional Haze Plans

A detailed history and background of the regional haze program is provided in multiple prior EPA proposal actions.[1] For additional background on the 2017 RHR revisions, please refer to section III of this document. Overview of Visibility Protection Statutory Authority, Regulation, and Implementation of ''Protection of Visibility: Amendments to Requirements for State Plans'' of the 2017 RHR.[2] The following is an abbreviated history and background of the regional haze program and 2017 RHR as it applies to the current action.

A. Regional Haze

In the 1977 CAA Amendments, Congress created a program for protecting visibility in the nation's mandatory Class I Federal areas, which include certain national parks and wilderness areas. See CAA section 169A. The CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.'' See CAA section 169A(a)(1).

In CAA section 169A(a)(1), Congress established the national goal of preventing any future and remedying any existing impairment of visibility in mandatory Class I Federal areas that results from manmade (anthropogenic) air pollution. The core component of a regional haze SIP submission for the second implementation period is a strategy that addresses regional haze in each Class I area within the State's borders and each Class I area outside the State that may be affected by emissions originating from within the State, CAA section 169A(b)(2)(B), 40 CFR 51.308(f)(2), and makes ''reasonable progress'' toward the national goal based on consideration of the four statutory factors in CAA section 169A(g)(1)—the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources.[3]

Regional haze is visibility impairment that is produced by a multitude of anthropogenic sources and activities which are located across a broad geographic area and that emit pollutants that impair visibility. Visibility impairing pollutants include fine and coarse particulate matter (PM) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.,* sulfur dioxide (SO_2), nitrogen oxides (NO_X), and, in some cases, volatile organic compounds (VOC) and ammonia (NH_3)). Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$), which impairs visibility by scattering and absorbing light. Visibility impairment reduces the perception of clarity and color, as well as visible distance.[4]

To address regional haze visibility impairment, the 1999 RHR established an iterative planning process that requires both States in which Class I areas are located and States ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I area to periodically submit SIP revisions to address such impairment. See CAA section 169A(b)(2); see also 40 CFR 51.308(b), (f) (establishing submission dates for iterative regional haze SIP revisions); 64 FR 35714, July 1, 1999, at page 35768.

[1] See 90 FR 13516 (March 24, 2025).

[2] See 82 FR 3078 (January 10, 2017) at page 3081.

[3] CAA section 169A(g)(1); 40 CFR 51.308(f)(2)(i).

[4] There are several ways to measure the amount of visibility impairment, *i.e.,* haze. One such measurement is the deciview, which is the principal metric used by the RHR. Under many circumstances, a change in one deciview will be perceived by the human eye to be the same on both clear and hazy days. The deciview is unitless. It is proportional to the logarithm of the atmospheric extinction of light, which is the perceived dimming of light due to its being scattered and absorbed as it passes through the atmosphere. Atmospheric light extinction (b^{ext}) is a metric used for expressing visibility and is measured in inverse megameters (Mm^{-1}). The formula for the deciview is $10 \ln (b^{ext}/10\ Mm - 1)$. See 40 CFR 51.301.

On January 10, 2017, the EPA promulgated revisions to the RHR that apply for the second and subsequent implementation periods (82 FR 3078, January 10, 2017). The reasonable progress requirements as revised in the 2017 RHR revisions are codified at 40 CFR 51.308(f).

B. The Western Regional Air Partnership

The Western Regional Air Partnership (WRAP) [5] is one of five regional air quality planning organizations across the United States.[6] The WRAP functions as a voluntary partnership of State, Tribe, Federal, and Local air agencies whose purpose is to understand current and evolving air quality issues in the West. There are 15 member States, including Alaska, 28 Tribes, and 30 Local air agency members.[7] Federal partners include the EPA, the National Park Service, the U.S. Fish and Wildlife Service, the Forest Service, and the Bureau of Land Management.

Based on emissions and monitoring data supplied by its membership, the WRAP produced technical tools to support modeling of visibility impacts at Class I areas across the West.[8] The WRAP Technical Support System for the second implementation period or ''TSSV2'' consolidated air quality monitoring data, meteorological and receptor modeling data analyses, emissions inventories and projections, and gridded air quality/visibility regional modeling results. The TSSV2 is accessible by members and allows for the creation of maps, figures, and tables to export and use in developing regional haze plans and maintains the original source data for verification and further analysis.[9]

III. Requirements for Regional Haze Plans for the Second Implementation Period

Under the CAA and the EPA's regulations, all 50 States, the District of Columbia, and the U.S. Virgin Islands were required, by July 31, 2021, to submit regional haze SIP revisions satisfying the applicable requirements for the second implementation period of the regional haze program. Each State's SIP must contain a long-term strategy for making reasonable progress toward meeting the national goal of remedying any existing and preventing any future anthropogenic visibility impairment in Class I areas. CAA section 169A(b)(2)(B). To this end, 40 CFR 51.308(f) lays out the process by which States determine what constitutes their long-term strategies, with the order of the requirements in 40 CFR 51.308(f)(1) through (3) generally mirroring the order of the steps in the reasonable progress analysis [10] and in 40 CFR 51.308(f)(4) through (6) containing additional, related requirements.

Broadly speaking, a State first must identify the Class I areas within the State and determine the Class I areas outside the State in which visibility may be affected by emissions from the State. These are the Class I areas that must be addressed in the State's long-term strategy. See 40 CFR 51.308(f), (f)(2). For each Class I area within its borders, a State must then calculate the baseline (five-year average period of 2000–2004), current, and natural visibility conditions (*i.e.,* visibility conditions without anthropogenic visibility impairment) for that area, as well as the visibility improvement made to date and the ''uniform rate of progress'' (URP).

The URP is the linear rate of progress needed to attain natural visibility conditions, assuming a starting point of baseline visibility conditions in 2004 and ending with natural conditions in 2064. This linear interpolation is used as a tracking metric to help States assess the amount of progress they are making towards the national visibility goal over time in each Class I area. See 40 CFR 51.308(f)(1). Each State having a Class I area and/or emissions that may affect visibility in a Class I area must then develop a long-term strategy that includes the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress in such areas. A reasonable progress determination is based on applying the four factors in CAA section 169A(g)(1) to sources of visibility impairing pollutants that the State has selected to assess for controls for the second implementation period. Additionally, as further explained below, the RHR at 40 CFR 51.3108(f)(2)(iv) separately provides five ''additional factors'' [11] that States must consider in developing their long-term strategies. See 40 CFR 51.308(f)(2).

A State evaluates potential emission reduction measures for those selected sources and determines which are necessary to make reasonable progress. Those measures are then incorporated into the State's long-term strategy. After a State has developed its long-term strategy, it then establishes reasonable progress goals (RPGs) for each Class I area within its borders by modeling the visibility impacts of all reasonable progress controls at the end of the second implementation period, *i.e.,* in 2028, as well as the impacts of other requirements of the CAA. The RPGs include reasonable progress controls not only for sources in the State in which the Class I area is located, but also for sources in other States that contribute to visibility impairment in that area. The RPGs are then compared to the baseline visibility conditions and the URP to ensure that progress is being made towards the statutory goal of preventing any future and remedying any existing anthropogenic visibility impairment in Class I areas. 40 CFR 51.308(f)(2) and (3). There are additional requirements in the rule, including (Federal Land Manager) FLM consultation, that apply to all visibility protection SIPs and SIP revisions. See *e.g.,* 40 CFR 51.308(i).

In addition to satisfying the requirements at 40 CFR 51.308(f) related to reasonable progress, the regional haze plan SIP revisions for the second implementation period must address the requirements in 40 CFR 51.308(g)(1) through (5) pertaining to periodic reports describing progress towards the RPGs, 40 CFR 51.308(f)(5), as well as requirements for FLM consultation that apply to all visibility protection SIPs and SIP revisions. See *e.g.,* 40 CFR 51.308(i).

A State must submit its regional haze SIP and subsequent SIP revisions to the EPA according to the requirements applicable to all SIP revisions under the CAA and the EPA's regulations. See CAA section 169A(b)(2); CAA section 110(a). Upon approval by the EPA, a SIP is enforceable by the Agency and the public under the CAA. If the EPA finds that a State fails to make a required SIP revision, or if the EPA finds that a State's SIP is incomplete or if it disapproves the SIP, the Agency must promulgate a Federal implementation plan (FIP) that satisfies the applicable requirements. CAA section 110(c)(1).

[5] The WRAP website may be found at *https://westar.org/.*

[6] See *https://www.epa.gov/visibility/visibility-regional-planning-organizations/* for information about the regional planning organizations, or RPOs, for visibility.

[7] The WRAP membership list may be found at *https://www.westar.org/wrap-council-members/.*

[8] Technical information may be found at *https://www.westar.org/wrap-technical-steering-committee/.*

[9] The WRAP TSSV2 for the second implementation period may be found at *https://views.cira.colostate.edu/tssv2/.*

[10] The EPA explained in the 2017 RHR that we were adopting new regulatory language in 40 CFR 51.308(f) that, unlike the structure in 40 CFR 51.308(d), ''tracked the actual planning sequence.'' See 82 FR 3078, January 10, 2017, at page 3091.

[11] The five ''additional factors'' for consideration in 40 CFR 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that States must consider and apply to sources in determining reasonable progress.

A. Identification of Class I Areas

The first step in developing a regional haze SIP is for a State to determine which Class I areas, in addition to those within its borders, ''may be affected'' by emissions from within the State. In the 1999 RHR, the EPA determined that all States contribute to visibility impairment in at least one Class I area and explained that the statute and regulations lay out an ''extremely low triggering threshold'' for determining ''whether States should be required to engage in air quality planning and analysis as a prerequisite to determining the need for control of emissions from sources within their State.'' See 64 FR 35714, July 1, 1999, at pages 35720–22.

A State must determine which Class I areas must be addressed by its SIP by evaluating the total emissions of visibility impairing pollutants from all sources within the State. The determination of which Class I areas may be affected by a State's emissions is subject to the requirement in 40 CFR 51.308(f)(2)(iii) to ''document the technical basis, including modeling, monitoring, cost, engineering, and emissions information, on which the State is relying to determine the emission reduction measures that are necessary to make reasonable progress in each mandatory Class I Federal area it affects.''

B. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and Uniform Rate of Progress

As part of assessing whether a SIP revision for the second implementation period is providing for reasonable progress towards the national visibility goal, the RHR contains requirements in 40 CFR 51.308(f)(1) related to tracking visibility improvement over time. The requirements of this section apply only to States having Class I areas within their borders; the required calculations must be made for each such Class I area. The EPA's 2018 Visibility Tracking Guidance provides recommendations to assist States in satisfying their obligations under 40 CFR 51.308(f)(1); specifically, in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP to account for the impacts of international anthropogenic emissions and prescribed fires. See 82 FR 3078, January 10, 2017, at pages 3103–05.

The RHR requires tracking of visibility conditions on two sets of days: the clearest and the most impaired days. Visibility conditions for both sets of days are expressed as the average deciview index for the relevant five-year period (the period representing baseline or current visibility conditions). The RHR provides that the relevant sets of days for visibility tracking purposes are the 20% clearest (the 20% of monitored days in a calendar year with the lowest values of the deciview index) and the 20% most impaired days (the 20% of monitored days in a calendar year with the highest amounts of anthropogenic visibility impairment). 40 CFR 51.301. A State must calculate visibility conditions for both the 20% clearest and the 20% most impaired days for the baseline period of 2000–2004 and the most recent five-year period for which visibility monitoring data are available (representing current visibility conditions). 40 CFR 51.308(f)(1)(i) and (iii). States must also calculate natural visibility conditions for the clearest and most impaired days, by estimating the conditions that would exist on those two sets of days absent anthropogenic visibility impairment. 40 CFR 51.308(f)(1)(ii). Using all these data, States must then calculate, for each Class I area, the amount of progress made since the baseline period (2000–2004) and how much improvement is left to achieve to reach natural visibility conditions.

Using the data for the set of most impaired days only, States must plot a line between visibility conditions in the baseline period and natural visibility conditions for each Class I area to determine the URP—the amount of visibility improvement, measured in deciviews, that would need to be achieved during each implementation period to achieve natural visibility conditions by the end of 2064. The URP is used in later steps of the reasonable progress analysis for informational purposes and to provide a non-enforceable benchmark against which to assess a Class I area's rate of visibility improvement. Additionally, in the 2017 RHR, the EPA provided States the option of proposing to adjust the endpoint of the URP to account for impacts of anthropogenic sources outside the United States and/or impacts of certain types of wildland prescribed fires. These adjustments are intended to avoid any perception that States should compensate for impacts from international anthropogenic sources and to give States the flexibility to determine that limiting the use of wildland-prescribed fire is not necessary for reasonable progress. See 82 FR 3078, January 10, 2017, at page 3107, footnote 116.

The EPA's 2018 Visibility Tracking Guidance can be used to help satisfy the 40 CFR 51.308(f)(1) requirements, including in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP. In addition, the 2020 Data Completeness Memo provides recommendations on the data completeness language referenced in section 51.308(f)(1)(i) and provides updated natural conditions estimates for each Class I area.

C. Long-Term Strategy for Regional Haze

The core component of a regional haze SIP revision is a long-term strategy that addresses regional haze in each Class I area within a State's borders and each Class I area outside the State that may be affected by emissions from the State. The long-term strategy ''must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to (f)(2)(i) through (iv).'' 40 CFR 51.308(f)(2). The amount of progress that is ''reasonable progress'' is based on applying the four statutory factors in CAA section 169A(g)(1) in an evaluation of potential control options for sources of visibility impairing pollutants, which is referred to as a ''four-factor'' analysis. The outcome of that analysis is the emission reduction measures that a particular source or group of sources needs to implement to make reasonable progress towards the national visibility goal. See 40 CFR 51.308(f)(2)(i). Emission reduction measures that are necessary to make reasonable progress may be either new, additional control measures for a source, or they may be the existing emission reduction measures that a source is already implementing. See 82 FR 3078, January 10, 2017, at pages 3092–93. Such measures must be represented by ''enforceable emissions limitations, compliance schedules, and other measures'' (*i.e.,* any additional compliance tools) in a State's long-term strategy in its SIP. 40 CFR 51.308(f)(2).

The regulation at 40 CFR 51.308(f)(2)(i) provides the requirements for the four-factor analysis. The first step of this analysis entails selecting the sources to be evaluated for emission reduction measures; to this end, the RHR requires States to consider ''major and minor stationary sources or groups of sources, mobile sources, and area sources'' of visibility impairing pollutants for potential four-factor control analysis. 40 CFR 51.308(f)(2)(i). A threshold question at this step is which visibility impairing pollutants will be analyzed.

While States have discretion to choose any source selection

methodology that is reasonable, whatever choices they make should be reasonably explained. To this end, 40 CFR 51.308(f)(2)(i) requires that a State's SIP submission include ''a description of the criteria it used to determine which sources or groups of sources it evaluated.'' The technical basis for source selection, which may include methods for quantifying potential visibility impacts such as emissions divided by distance metrics, trajectory analyses, residence time analyses, and/or photochemical modeling, must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii).

Once a State has selected the set of sources, the next step is to determine the emissions reduction measures for those sources that are necessary to make reasonable progress for the second implementation period.[12] This is accomplished by considering the four factors—''the costs of compliance, the time necessary for compliance, and the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements.'' CAA section 169A(g)(1). The EPA has explained that the four-factor analysis is an assessment of potential emission reduction measures (*i.e.,* control options) for sources: ''use of the terms 'compliance' and 'subject to such requirements' in section 169A(g)(1) strongly indicates that Congress intended the relevant determination to be the requirements with which sources would have to comply to satisfy the CAA's reasonable progress mandate.'' 82 FR 3078, January 10, 2017, at page 3091. Thus, for each source it has selected for four-factor analysis,[13] a State must consider a ''meaningful set'' of technically feasible control options for reducing emissions of visibility impairing pollutants. 82 FR 3078, January 10, 2017, at page 3088.

The EPA has also explained that, in addition to the four statutory factors, States have flexibility under the CAA and RHR to reasonably consider visibility benefits as an additional factor alongside the four statutory factors. Ultimately, while States have discretion to reasonably weigh the factors and to determine what level of control is needed, 40 CFR 51.308(f)(2)(i) provides that a State ''must include in its implementation plan a description of . . . how the four factors were taken into consideration in selecting the measure for inclusion in its long-term strategy.''

As explained above, 40 CFR 51.308(f)(2)(i) requires States to determine the emission reduction measures for sources that are necessary to make reasonable progress by considering the four factors. Pursuant to 40 CFR 51.308(f)(2), measures that are necessary to make reasonable progress towards the national visibility goal must be included in a State's long-term strategy and in its SIP. If the outcome of a four-factor analysis is that an emissions reduction measure is necessary to make reasonable progress towards remedying existing or preventing future anthropogenic visibility impairment, that measure must be included in the SIP.

The characterization of information on each of the factors is also subject to the documentation requirement in 40 CFR 51.308(f)(2)(iii). The reasonable progress analysis is a technically complex exercise, and also a flexible one, that provides States with bounded discretion to design and implement approaches appropriate to their circumstances. Given this flexibility, 40 CFR 51.308(f)(2)(iii) plays an important function in requiring a State to document the technical basis for its decision making so that the public and the EPA can comprehend and evaluate the information and analysis the State relied upon to determine what emission reduction measures must be in place to make reasonable progress. The technical documentation must include the modeling, monitoring, cost, engineering, and emissions information on which the State relied to determine the measures necessary to make reasonable progress. Additionally, the RHR at 40 CFR 51.308(f)(2)(iv) separately provides five ''additional factors'' [14] that States must consider in developing their long-term strategies: (1) emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (2) measures to reduce the impacts of construction activities; (3) source retirement and replacement schedules; (4) basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and smoke management programs; and (5) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy.

Because the air pollution that causes regional haze crosses State boundaries, 40 CFR 51.308(f)(2)(ii) requires a State to consult with other States that also have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I area. If a State, pursuant to consultation, agrees that certain measures (*e.g.,* a certain emission limitation) are necessary to make reasonable progress at a Class I area, it must include those measures in its SIP. 40 CFR 51.308(f)(2)(ii)(A). Additionally, the RHR requires that States that contribute to visibility impairment at the same Class I area consider the emission reduction measures the other contributing States have identified as being necessary to make reasonable progress for their own sources. 40 CFR 51.308(f)(2)(ii)(B). If a State has been asked to consider or adopt certain emission reduction measures, but ultimately determines those measures are not necessary to make reasonable progress, that State must document in its SIP the actions taken to resolve the disagreement. 40 CFR 51.308(f)(2)(ii)(C). Under all circumstances, a State must document in its SIP revision all substantive consultations with other contributing States. 40 CFR 51.308(f)(2)(ii)(C).

In this proposed action, the EPA notes that it is the Agency's policy, as announced in the EPA's recent approval of the West Virginia Regional Haze SIP,[15] that where the State has considered the four statutory factors, and visibility conditions for a Class I area impacted by a State are projected to be below the URP in 2028, the State has presumptively demonstrated reasonable progress for the second implementation period for that area. The EPA acknowledges that this reflects a change in policy as to how the URP should be used in the evaluation of regional haze second planning period

[12] The CAA provides that, ''[i]n determining reasonable progress there shall be taken into consideration'' the four statutory factors. See CAA section 169A(g)(1). However, in addition to four-factor analyses for selected sources, groups of sources, or source categories, a State may also consider additional emission reduction measures for inclusion in its long-term strategy, *e.g.,* from other newly adopted, on-the-books, or on-the-way rules and measures for sources not selected for four-factor analysis for the second implementation period.

[13] ''Each source'' or ''particular source'' is used here as shorthand. While a source-specific analysis is one way of applying the four factors, neither the statute nor the RHR requires States to evaluate individual sources. Rather, States have ''the flexibility to conduct four-factor analyses for specific sources, groups of sources or even entire source categories, depending on state policy preferences and the specific circumstances of each state.'' See 82 FR 3078, January 10, 2017, at page 3088.

[14] The five ''additional factors'' for consideration in 40 CFR 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that States must consider and apply to sources in determining reasonable progress.

[15] See proposed rulemaking (90 FR 16478, April 18, 2025, at page 16483) and final rule (90 FR 29737, July 7, 2025, at pages 29738–39).

SIPs. However, the EPA finds that this policy aligns with the purpose of the statute and RHR, which is achieving ''reasonable'' progress, not maximal progress, toward Congress' natural visibility goal.

D. Reasonable Progress Goals

Reasonable progress goals (RPGs) ''measure the progress that is projected to be achieved by the control measures States have determined are necessary to make reasonable progress based on a four-factor analysis.'' 82 FR 3078, January 10, 2017, at page 3091. For the second implementation period, the RPGs are set for 2028. RPGs are not enforceable targets, 40 CFR 51.308(f)(3)(iii). While States are not legally obligated to achieve the visibility conditions described in their RPGs, 40 CFR 51.308(f)(3)(i) requires that ''[t]he long-term strategy and the reasonable progress goals must provide for an improvement in visibility for the most impaired days since the baseline period and ensure no degradation in visibility for the clearest days since the baseline period.''

RPGs may also serve as a metric for assessing the amount of progress a State is making towards the national visibility goal. To support this approach, the RHR requires States with Class I areas to compare the 2028 RPG for the most impaired days to the corresponding point on the URP line (representing visibility conditions in 2028 if visibility were to improve at a linear rate from conditions in the baseline period of 2000–2004 to natural visibility conditions in 2064). If the most impaired days RPG in 2028 is above the URP (*i.e.,* if visibility conditions are improving more slowly than the rate described by the URP), each State that contributes to visibility impairment in the Class I area must demonstrate, based on the four-factor analysis required under 40 CFR 51.308(f)(2)(i), that no additional emission reduction measures would be reasonable to include in its long-term strategy. 40 CFR 51.308(f)(3)(ii). To this end, 40 CFR 51.308(f)(3)(ii) requires that each State contributing to visibility impairment in a Class I area that is projected to improve more slowly than the URP provide ''a robust demonstration, including documenting the criteria used to determine which sources or groups [of] sources were evaluated and how the four factors required by paragraph (f)(2)(i) were taken into consideration in selecting the measures for inclusion in its long-term strategy.''

E. Monitoring Strategy and Other State Implementation Plan Requirements

Section 51.308(f)(6) requires States to have certain strategies and elements in place for assessing and reporting on visibility. Individual requirements under this section apply either to States with Class I areas within their borders, States with no Class I areas but that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area, or both. Compliance with the monitoring strategy requirement may be met through a State's participation in the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring network, which is used to measure visibility impairment caused by air pollution at the 156 Class I areas covered by the visibility program. 40 CFR 51.308(f)(6), (f)(6)(i), and (iv).

All States' SIPs must provide for procedures by which monitoring data and other information are used to determine the contribution of emissions from within the State to regional haze visibility impairment in affected Class I areas, as well as a Statewide inventory documenting such emissions. 40 CFR 51.308(f)(6)(ii), (iii), and (v). All States' SIPs must also provide for any other elements, including reporting, recordkeeping, and other measures, that are necessary for States to assess and report on visibility. 40 CFR 51.308(f)(6)(vi).

F. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires a State's regional haze SIP revision to address the requirements of 40 CFR 51.308(g)(1) through (5) so that the plan revision due in 2021 will serve also as a progress report addressing the period since submission of the progress report for the first implementation period. The regional haze progress report requirement is designed to inform the public and the EPA about a State's implementation of its existing long-term strategy and whether such implementation is in fact resulting in the expected visibility improvement. See 81 FR 26942, May 4, 2016, at page 26950; see also 82 FR 3078, January 10, 2017, at page 3119. To this end, every State's SIP revision for the second implementation period is required to assess changes in visibility conditions and describe the status of implementation of all measures included in the State's long-term strategy, including Best Available Retrofit Technology (BART) and reasonable progress emission reduction measures from the first implementation period, and the resulting emissions reductions. 40 CFR 51.308(g)(1) and (2).

G. Requirements for State and Federal Land Manager Coordination

CAA section 169A(d) requires that before a State holds a public hearing on a proposed regional haze SIP revision, it must consult with the appropriate FLM or FLMs; pursuant to that consultation, the State must include a summary of the FLMs' conclusions and recommendations in the notice to the public. Consistent with this statutory requirement, the RHR also requires that States ''provide the [FLM] with an opportunity for consultation, in person and at a point early enough in the State's policy analyses of its long-term strategy emission reduction obligation so that information and recommendations provided by the [FLM] can meaningfully inform the State's decisions on the long-term strategy.'' 40 CFR 51.308(i)(2). For the EPA to evaluate whether FLM consultation meeting the requirements of the RHR has occurred, the SIP submission should include documentation of the timing and content of such consultation. The SIP revision submitted to the EPA must also describe how the State addressed any comments provided by the FLMs. 40 CFR 51.308(i)(3). Finally, a SIP revision must provide procedures for continuing consultation between the State and FLMs regarding the State's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas. 40 CFR 51.308(i)(4).

IV. The EPA's Evaluation of the Alaska Regional Haze Plan for the Second Implementation Period

A. Background on the Alaska First Implementation Period Plan

On April 4, 2011, Alaska submitted its regional haze plan for the first implementation period (2008 through 2018). The CAA required that first implementation period plans include, among other things, a long-term strategy for making reasonable progress and BART requirements for certain older facilities, where applicable.[16] The EPA approved Alaska's first implementation period plan on February 14, 2013 (78 FR 10546). On March 10, 2016, the State

[16] The requirements for regional haze SIPs for the first implementation period are contained in CAA section 169A(b)(2)(B) and 40 CFR 51.308(d) and (e). See also 40 CFR 51.308(b).

submitted a five-year progress report, that the EPA approved on April 12, 2018 (83 FR 15746).[17]

B. The Alaska Second Implementation Period Plan and the EPA's Evaluation

On July 25, 2022, Alaska submitted its regional haze plan for the second implementation period.[18] The Alaska DEC made the plan available for public comment from March 30, 2022, through May 24, 2022, and held a public hearing on May 10, 2022.[19] Alaska received and responded to public comments and included the comments and responses in the regional haze plan submission.[20] We note that, to address certain regional haze requirements, the 2022 regional haze plan submission relied in part on SO_2 best available control technology (BACT) analyses originally conducted and submitted as part of the Fairbanks $PM_{2.5}$ serious nonattainment plan in 2020 and 2021.[21] However, Alaska subsequently revised the original SO_2 BACT analyses to address EPA concerns and to account for more recent vendor quotes and fuel prices.[22] These updated SO_2 BACT analyses were later submitted by Alaska to the EPA as part of a December 4, 2024, SIP revision to the Fairbanks $PM_{2.5}$ serious area nonattainment plan.[23]

To clarify the relationship between the Alaska regional haze plan and the revisions to the Fairbanks $PM_{2.5}$ serious area nonattainment plan, Alaska sent a letter to the EPA on October 6, 2025. The letter stated that Alaska was relying on the 2024 updated SO_2 BACT analyses to meet the regional haze four-factor analysis requirements for the second implementation period. Accordingly, the State found no SO_2 controls to be necessary for reasonable progress in the second implementation period. The following sections describe in detail the Alaska regional haze plan submission and clarification letter, including, but not limited to, air quality modeling conducted, source selection, control measure analysis, and visibility improvement progress at Class I areas in Alaska. The following sections also describe the EPA's evaluation of the submission against the requirements of the CAA and RHR for the second implementation period. The submission, clarification letter, and other supporting documents may be found in the docket for this action.

C. Identification of Class I Areas

Section 169A(b)(2) of the CAA requires each State in which any Class I area is located or ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I area to have a plan for making reasonable progress toward the national visibility goal. The RHR implements this statutory requirement at 40 CFR 51.308(f), which provides that each State's plan ''must address regional haze in each mandatory Class I Federal area located within the State and in each mandatory Class I Federal area located outside the State that may be affected by emissions from within the State,'' and (f)(2), which requires each State's plan to include a long-term strategy that addresses regional haze in such Class I areas.

The EPA concluded in the 1999 RHR that ''all [s]tates contain sources whose emissions are reasonably anticipated to contribute to regional haze in a Class I area,'' 64 FR 35714, July 1, 1999, at page 35721, and this determination was not changed in the 2017 RHR. Critically, the statute and regulation both require that the cause-or-contribute assessment consider all emissions of visibility impairing pollutants from a State, as opposed to emissions of a particular pollutant or emissions from a certain set of sources.

1. Alaska Class I Areas

Alaska has four Class I areas: [24] Denali National Park and Preserve (Denali National Park), Tuxedni National Wildlife Refuge/National Wilderness Area (Tuxedni Wilderness Area), Simeonof National Wildlife Refuge/National Wilderness Area (Simeonof Wilderness Area), and the Bering Sea National Wildlife Refuge/National Wilderness Area (Bering Sea Wilderness Area). These areas are described in the following paragraphs.

a. Denali National Park

Denali National Park comprises more than six million acres in the Alaska interior managed by the National Park Service. Mountains are a prominent feature of the park, reaching 20,320 feet elevation.[25] The surrounding tundra and taiga are home to dozens of mammals, including Dall sheep, caribou, grizzly bears, moose, foxes, lynx, and marmots, to name a few. Over 400 flowering plants grow there, and over 100 bird species have been sighted.[26]

b. Simeonof Wilderness Area

The Simeonof Wilderness Area is managed by the U.S. Fish and Wildlife Service.[27] It covers 25,855 acres, including the water, shoals, and kelp beds within one mile of Simeonof Island.[28] The wilderness area is home to over 55 species of birds as well as sea otters, hair seals, walruses, and whales.[29] Sandpoint, population 652, is the nearest community, located on an island approximately 60 miles northwest of the wilderness area.[30]

c. Tuxedni Wilderness Area

The Tuxedni Wilderness Area was established on Chisik and Duck islands at the mouth of Tuxedni Bay.[31] The 5,566-acre wilderness area is managed by the U.S. Fish and Wildlife Service. The remote area is a refuge for seabirds, bald eagles and peregrine falcons. Access is limited to small boats and planes, when the weather allows.[32]

d. Bering Sea Wilderness Area

The Bering Sea Wilderness Area is the most isolated and remote Class I area in the U.S.[33] It is located on a collection

[17] 83 FR 7002, February 16, 2018.

[18] CAA sections 169A; 40 CFR 51.308(f).

[19] Alaska submission, regional haze public notice document dated March 30, 2022, and regional haze affidavit of oral hearing document dated July 1, 2022.

[20] Alaska submission, regional haze response to comments (RTC) document dated July 5, 2022.

[21] Determinations of Attainment by the Attainment Date, Determinations of Failure To Attain by the Attainment Date and Reclassification for Certain Nonattainment Areas for the 2006 24-Hour Fine Particulate Matter National Ambient Air Quality Standards, published May 10, 2017 (82 FR 21711).

[22] The EPA's concerns were detailed in the Agency's proposed disapproval of the plan on January 10, 2023, at 88 FR 1454.

[23] The 2024 Fairbanks plan submission may be found in docket EPA–R10–OAR–2024–0595 at *https://www.regulations.gov/docket/EPA-R10-OAR-2024-0595/*.

[24] Section 169A of the CAA was established in 1977 to protect visibility in all wilderness areas over 5,000 acres and all national parks over 6,000 acres. 156 such areas were designated throughout the U.S.

[25] See National Park Service web page for Denali National Park and Preserve at *https://www.nps.gov/dena/index.htm/*.

[26] See Wilderness Connect website at *https://wilderness.net/visit-wilderness/?ID=153/*.

[27] See Alaska Maritime National Wildlife Refuge Wilderness Areas web page, which includes Simeonof Wilderness, on the U.S. Fish and Wildlife Service website at *https://www.fws.gov/node/267174/*.

[28] See Wilderness Connect website at *https://wilderness.net/visit-wilderness/?ID=555/*.

[29] Alaska submission, Combined Section III.K.13, Page A–8.

[30] U.S. census data, available in the docket for this action and *https://live.laborstats.alaska.gov/pop/index.cfm/*.

[31] See Alaska Maritime National Wildlife Refuge Wilderness Areas web page, which includes Tuxedni Wilderness, on the U.S. Fish and Wildlife Service website at *https://www.fws.gov/node/267174/*.

[32] Wilderness Connect website at *https://wilderness.net/visit-wilderness/?ID=614/*.

[33] See Alaska Maritime National Wildlife Refuge Wilderness Areas web page, which includes Bering Sea Wilderness, on the U.S. Fish and Wildlife Service website *https://www.fws.gov/node/267174/*.

of islands in the Bering Sea, 350 miles southwest of Nome, Alaska. The U.S. Fish and Wildlife Service manages the 81,340 acres, where millions of seabirds congregate, as well as northern sea lions, seals, and walruses.[34]

2. Alaska Visibility Monitors

Haze species at Alaska Class I areas are measured and analyzed via the IMPROVE network.[35] Table 1 of this document lists the IMPROVE monitors representing visibility at Alaska Class I areas.

TABLE 1—MONITORS REPRESENTING VISIBILITY AT ALASKA CLASS I AREAS[36]

Monitor ID	Sponsor	Class I area	Years operated
DENA1	National Park Service	Denali National Park	1988–present.
SIME1	U.S. Fish and Wildlife Service	Simeonof Wilderness Area	2001–present.
TUXE1	U.S. Fish and Wildlife Service	Tuxedni Wilderness Area	2001–2014.
KPBO1	U.S. Fish and Wildlife Service	Tuxedni Wilderness Area	2016–present.

We note that, due to its extremely remote location and lack of reliable power, there is no visibility monitoring at the Bering Sea Wilderness Area.[37] No electricity or other infrastructure exists to support a monitoring effort on the uninhabited islands that make up this wilderness area. A DELTA–DRUM mobile sampler was installed during a field visit in 2002, but due to power supply issues, no viable baseline data were collected.[38] We acknowledge that the RHR contemplates that for areas without onsite monitoring, States should work with the EPA to use other available, representative monitoring data to establish a baseline.[39] However, because this wilderness area is in the middle of the Bering Sea, hundreds of miles from the mainland and any other monitoring locations, data from other sites in Alaska are not considered representative of visibility at the Bering Sea Wilderness Area.

In the regional haze plan for the first implementation period, Alaska evaluated and discussed the potential for future anthropogenic emissions to impact visibility at the Bering Sea Wilderness Area, and concluded that future impacts from any local industrial, commercial, or community developments were highly unlikely.[40] The State acknowledged that visibility in the area would continue to be influenced by international sources beyond Alaska's control, and may also be influenced by future emissions from international commercial shipping and oil and gas development in the Bering Sea. However, these latter source categories are under Federal jurisdiction. With respect to global shipping, the International Marine Organization (IMO) global sulfur limit rule went into effect on January 1, 2020.[41] This rule applies to all commercial shipping and limits fuel sulfur content to 0.5%.[42] This is a seven-fold decrease in fuel sulfur content from the prior IMO limit of 35,000 part per million. While the EPA cannot estimate the exact impact of the sulfur limits on visibility impairment at Bering Sea, this new rule is likely to reduce sulfate formation in the area.[43] Based on this information, the EPA approved Alaska's approach to the Bering Sea Wilderness Area in the first implementation period.

For the second implementation period, Alaska stated in its regional haze plan submission that, due to the logistical challenges associated with monitoring this remote location, there have been no monitoring attempts since 2002, and none are currently planned.[44] Consistent with our action on Alaska's first implementation period regional haze plan, we have determined that Alaska's approach to the Bering Sea Wilderness Area in the second implementation period is reasonable.

In addition, we note that Alaska operates an IMPROVE protocol site south of Denali National Park at Trapper Creek (TRCR1), which is sited to evaluate potential transport of pollution into the park from Anchorage and areas to the south.[45] While data from this protocol site may be compared to data from the DENA1 site, the DENA1 site remains the official IMPROVE site representative of visibility conditions in Denali National Park.[46]

As detailed in the submission, Alaska determined there are no Class I areas in other States affected by emissions from Alaska sources.[47] Alaska borders no other State and is geographically distant from all other States.[48] We concur with the State's finding that emissions from Alaska sources do not impact Class I areas outside the State.[49]

D. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress

Section 51.308(f)(1) requires States to determine the following for ''each mandatory Class I Federal area located within the State'': baseline visibility conditions for the most impaired and clearest days, natural visibility conditions for the most impaired and clearest days, progress to date for the most impaired and clearest days, the differences between current visibility conditions and natural visibility conditions, and the URP. This section also provides the option for States to propose adjustments to the URP line for a Class I area to account for visibility impacts from anthropogenic sources outside the United States and/or the impacts from wildland prescribed fires that were conducted for certain, specified objectives. 40 CFR 51.308(f)(1)(vi)(B).

[34] See Wilderness Connect website at *https://wilderness.net/visit-wilderness/?ID=36/*.

[35] See IMPROVE website at *https://vista.cira.colostate.edu/Improve/*.

[36] Sources: Alaska submission, Combined Section III.K.13, Page III.K.13.C1 through C–4 and FLM Environmental Database, available online at *https://views.cira.colostate.edu/fed/* using Query Wizard, Sites Tab.

[37] See IMPROVE website at *https://vista.cira.colostate.edu/Improve/improve-program/*.

[38] See our proposed action on the first implementation period SIP submission on February 24, 2012, 77 FR 11022, at pages 11028–29.

[39] 40 CFR 51.308(d)(2)(i).

[40] See Alaska Regional Haze Plan submission for the first implementation period, February 11, 2011, at *https://www.regulations.gov* docket EPA–R10–OAR–2011–0367, document EPA–R10–OAR–2011–0367–0002 at pages III.K.4–120 through 121.

[41] Fuel sulfur limits are codified at 40 CFR part 1043. See 84 FR 69335, 69336 (December 18, 2019).

[42] *Id.*

[43] *See* 88 FR 33555, 33557 (May 24, 2023).

[44] Alaska submission, Combined Section III.K.13, Page III.K.13.C–4.

[45] *Id.,* Page III.K.13.C–1 and Figures III.K.D–2, D–6, D–10, D–14.

[46] See IMPROVE website at *https://vista.cira.colostate.edu/Improve/*.

[47] Alaska submission, Combined Section III.K.13, Page III.K.13.C–1.

[48] *Id.,* Page III.K.13.A–7.

[49] 78 FR 10546, February 14, 2013.

1. Alaska Visibility Conditions

The Alaska regional haze plan submission addressed baseline, current, and natural visibility conditions, and the URP for each Class I area—with the exception of Bering Sea Wilderness Area—as required by the RHR and the EPA's technical guidance on tracking visibility progress.[50] Tables 2 and 3 of this document summarize visibility data provided in the Alaska submission, including adjustments by the EPA to the natural conditions endpoint and URP to account for certain international sources of anthropogenic sulfate.[51] We note that, to attempt to further quantify out-of-State and natural sources of sulfate, Alaska worked with the University of Alaska Fairbanks to run GEOS-Chem, a global 3-dimensional chemical transport model, and included the modeling results in the submission, as further discussed in section IV.F. of this document.[52]

TABLE 2—CLEAREST DAYS VISIBILITY CONDITIONS AT ALASKA CLASS I AREAS IN DECIVIEWS[53]

Monitor ID	Class I area	Baseline 2000–2004	Current 2014–2018
DENA1	Denali National Park	2.4	2.2
SIME1	Simeonof Wilderness	7.6	7.7
TUXE1	Tuxedni Wilderness	4.0	3.9

TABLE 3—MOST IMPAIRED DAYS VISIBILITY CONDITIONS AT ALASKA CLASS I AREAS IN DECIVIEWS[54]

Monitor ID	Class I area	Baseline 2000–2004	Current 2014–2018	EPA-adjusted URP 2028	EPA-adjusted natural 2064
DENA1	Denali National Park	7.1	6.6	6.5	5.6
SIME1	Simeonof Wilderness	13.7	13.9	13.4	12.9
TUXE1	Tuxedni Wilderness	10.5	10.0	10.3	9.9

a. Denali National Park

The data in Tables 2 and 3 of this document suggest that current visibility at DENA1 has improved since the baseline period for both the clearest and most impaired days.[55] In addition, current conditions at DENA1 appear to be within half of a deciview of the EPA-adjusted URP for 2028 and within one deciview of the EPA-adjusted natural conditions for both the clearest and most impaired days.[56]

Alaska provided data in the submission showing that ammonium sulfate and organic mass are the dominant haze species at DENA1.[57] Anthropogenic and natural sources of sulfate from inside and outside Alaska are thought to contribute to sulfate at DENA1.[58] The submission highlighted a number of anthropogenic sources of pollution located near DENA1, including Denali National Park Headquarters, Park Road, Alaska Railroad, Usibelli Coal Mine, and the Healy Power Plant.[59] We further discuss sulfur dioxide emissions from the Healy Power Plant in section IV.E. of this document.

Alaska stated in the submission that the organic mass contribution at DENA1 may primarily be explained by wildfires in south central Alaska.[60] The EPA fire emissions inventory and the Alaska fire emissions inventory show variability from year to year.[61] Alaska also noted that 2009 was a significant fire wildfire year when 2.9 million acres burned in interior Alaska.[62] The Redoubt volcano in southcentral Alaska, a source of SO_2 emissions and potential sulfate contributions, erupted that same year.[63]

b. Simeonof Wilderness Area

At first glance, the data in Tables 2 and 3 of this document suggest that current visibility at SIME1 may have degraded since the baseline period for both the clearest and most impaired days. However, the EPA reviewed the underlying data used to calculate the average haze indices for SIME1 and found no statistical difference between baseline and current conditions for the clearest and most impaired days at SIME1. The EPA's technical memo documenting the statistical analysis may be found in the docket for this action.[64] In addition, current conditions at SIME1 appear to be within half a deciview of the EPA-adjusted URP for 2028, and within two deciviews of the EPA-

[50] EPA Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program, December 2018.

[51] Specifically, the EPA adjusted natural conditions on the 20% most impaired days from 4.7 to 5.6 deciviews for DENA1, 8.5 to 12.9 deciviews for SIME1, and 7.0 to 9.9 deciviews for TUXE1. See Technical Support Document for the EPA's Updated 2028 Regional Haze Modeling for Hawaii, Virgin Islands, and Alaska. EPA–454/R–21–007. August 2021.

[52] Alaska submission, Appendix III.K.13.G. Modeling.

[53] Sources: Alaska submission, Combined Section III.K.13, Tables III.K.D–3 through D–8 and Tables III.K.13.I–1 and I–2; and Technical Support Document for the EPA's Updated 2028 Regional Haze Modeling for Hawaii, Virgin Islands, and Alaska, EPA–454/R–21–007, August 2021. *Note:* A full dataset was not yet available for KPBO1 at the time Alaska developed the submission and the EPA conducted its modeling.

[54] Sources: Alaska submission, Combined Section III.K.13, Tables III.K.D–3 through D–8 and Tables III.K.13.I–1 and I–2; and Technical Support Document for the EPA's Updated 2028 Regional Haze Modeling for Hawaii, Virgin Islands, and Alaska, EPA–454/R–21–007, August 2021. *Note:* a full dataset was not yet available for KPBO1 at the time Alaska developed the submission and the EPA conducted its modeling.

[55] Technical Support Document for the EPA's Updated 2028 Regional Haze Modeling for Hawaii, Virgin Islands, and Alaska. EPA–454/R–21–007. August 2021.

[56] The data also show that at the TRCR1 protocol site, visibility on the clearest days was 3.5 deciviews at baseline and 3.4 deciviews at current conditions, and visibility on the most impaired days was 9.1 deciviews at baseline, and 8.8 deciviews at current conditions. Alaska submission, Combined Section III.K.13, Tables III.K.D.4 and III.K.D.8.

[57] Alaska submission, Combined Section III.K.13, Figures III.K.D–2 and D–3.

[58] *Id.,* Pages III.K.13.D–8 through D–12.

[59] *Id.,* Page III.K.13.D–8.

[60] *Id.,* Pages III.K.E–11 through E–15.

[61] *Id.,* Table III.K.13.E–5 Data from SmartFire2/BlueSky framework and Table III.K.13.E–6 Data from the Alaska Interagency Coordination Center (AICC).

[62] *Id.,* Page III.K.13.D–13.

[63] See also *The 2009 Eruption of Redoubt Volcano, Alaska, State of Alaska, Department of Natural Resources, 2012.* Available at *https://pubs.usgs.gov/publication/70007150/.*

[64] Statistical analysis comparing the current 2014–2018 visibility conditions to baseline 2000–2004 conditions for the 20% most impaired days and 20% clearest days at the Alaska Simeonof Wilderness (SIME1) IMPROVE monitoring site, U.S. Environmental Protection Agency, Region 10, Laboratory Services and Applied Science Division; Kotchenruther, R. (June 27, 2023).

adjusted natural conditions for both the clearest and most impaired days.

In the submission, Alaska stated that visibility impairment at SIME1 is primarily due to ammonium sulfate followed by sea salt.[65] Alaska further stated that anthropogenic sources of sulfate are likely to include commercial marine vessel emissions from ships transiting the international shipping lane near the monitor, but that natural sources of sulfate at SIME1 are important. The near-ocean location of SIME1 yields significant sea salt contribution, as reflected in the IMPROVE data.[66] Oceanic dimethyl sulfide, a volatile sulfur compound that is produced by plankton and converted to SO_2 in the marine atmosphere, is also understood to contribute.[67] Alaska estimated that roughly 60 percent of oceanic dimethyl sulfide is converted to SO_2 in the Gulf of Alaska, however, the exact contribution of dimethyl sulfide to sulfate at SIME1 is unknown at this time. [68] In addition, Alaska stated that SIME1 is likely influenced by sulfur degassing from nearby active and semi-active volcanoes.[69]

c. Tuxedni Wilderness Area

The data in Tables 2 and 3 of this document suggest that current visibility at TUXE1 has improved since the baseline period for both the clearest and most impaired days.[70] In addition, current conditions at TUXE1 appear to be within half a deciview of the EPA-adjusted URP for 2028 and within one deciview of the EPA-adjusted natural conditions for both the clearest and most impaired days.

We note that the TUXE1 monitor was re-located in 2015, from the west side of Cook Inlet to the east side in the Kenai Peninsula Borough (KPBO1) due to monitor access issues.[71] The last year of complete data for TUXE1 was 2014, therefore, Alaska calculated current conditions for TUXE1 using 2012 through 2014 data. The first full year of data for KPBO1 was 2016. The Alaska submission stated that the next regional haze progress report would include a full dataset and analysis for KPBO1.[72] We find this approach to data handling reasonable for the TUXE1 and KPBO1 monitors. Both the TUXE1 and KPBO1 monitors are IMPROVE monitors that are representative of visibility conditions in the Tuxedni Wilderness Area.

For the clearest days, Alaska found that the annual total light extinction at KPBO1 was slightly higher than TUXE1 and appeared to be more evenly distributed among ammonium sulfate, coarse mass, organic mass, and sea salt.[73] On the most impaired days, the annual extinction at TUXE1 was predominantly ammonium sulfate.[74] Because the monitor only began yielding data in 2016, a full dataset was not available to calculate annual extinction at KPBO1 for the most impaired days. The Alaska submission stated that the next regional haze progress report would include a full dataset and analysis for KPBO1.[75]

Alaska estimated that the largest categories of anthropogenic impairment at TUXE1 and KPBO1 were most likely to include offshore oil drilling platforms and oil and gas facilities in the Cook Inlet. As part of the source selection process, the State reviewed actual sulfur dioxide emissions at a number of platforms and facilities in the Cook Inlet. Please see section IV.E. of this document for further details.

In conclusion, the EPA proposes to find that the Alaska submission meets the requirements of 40 CFR 51.308(f)(1) to calculate baseline, current, and natural visibility conditions; progress to date; and uniform rate of progress for the second implementation period. For this reason, we propose to approve the portions of the Alaska regional haze plan submission relating to 40 CFR 51.308(f)(1).

E. Long-Term Strategy for Regional Haze

The long-term strategy ''must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to (f)(2)(i) through (iv).'' 40 CFR 51.308(f)(2).

The regulation at 40 CFR 51.308(f)(2)(i) provides the requirements for the four-factor analysis. The first step of this analysis entails selecting the sources to be evaluated for emission reduction measures. While States have discretion to choose any source selection methodology that is reasonable, whatever choices they make should be reasonably explained. To this end, 40 CFR 51.308(f)(2)(i) requires that a State's SIP submission include ''a description of the criteria it used to determine which sources or groups of sources it evaluated.'' The technical basis for source selection, which may include methods for quantifying potential visibility impacts such as emissions divided by distance metrics, trajectory analyses, residence time analyses, and/or photochemical modeling, must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii).

Once a State has selected the set of sources, the next step is to determine the emissions reduction measures for those sources that are necessary to make reasonable progress for the second implementation period.[76] This is accomplished by considering the four factors—''the costs of compliance, the time necessary for compliance, and the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements.'' CAA section 169A(g)(1). The EPA has explained that the four-factor analysis is an assessment of potential emission reduction measures (*i.e.,* control options) for sources; Thus, for each source it has selected for four-factor analysis, a State must consider a ''meaningful set'' of technically feasible control options for reducing emissions of visibility impairing pollutants.[77]

The EPA has also explained that, in addition to the four statutory factors, States have flexibility under the CAA and RHR to reasonably consider visibility benefits as an additional factor alongside the four statutory factors.[78] Ultimately, while States have discretion to reasonably weigh the factors and to determine what level of control is needed, 40 CFR 51.308(f)(2)(i) provides

[65] Alaska submission, Combined Section III.K.13, Figures III.K.13.D–10 and D–11.

[66] *Ibid.*

[67] *Id.,* Pages III.K.13.E–16, E–17.

[68] *Id.,* Page III.K.13.E–16.

[69] *Id.,* Page III.K.13.D–17.

[70] The EPA adjusted the natural visibility end point for Alaska Class I areas to account for certain international anthropogenic sulfate. See Technical Support Document for the EPA's Updated 2028 Regional Haze Modeling for Hawaii, Virgin Islands, and Alaska. EPA–454/R–21–007. August 2021.

[71] Alaska submission, Section III.K.13 Combined Sections, Page II.K.13.C–3.

[72] *Id.,* Page III.K.13.D–7.

[73] *Id.,* Figure III.K.13.D–18.

[74] *Id.,* Figure III.K.13.D–14.

[75] *Id.,* Page III.K.13.D–7.

[76] The CAA provides that, ''[i]n determining reasonable progress there shall be taken into consideration'' the four statutory factors. CAA section 169A(g)(1). However, in addition to four-factor analyses for selected sources, groups of sources, or source categories, a State may also consider additional emission reduction measures for inclusion in its long-term strategy, *e.g.,* from other newly adopted, on-the-books, or on-the-way rules and measures for sources not selected for four-factor analysis for the second planning period.

[77] ''Each source'' or ''particular source'' is used here as shorthand. While a source-specific analysis is one way of applying the four factors, neither the statute nor the RHR requires States to evaluate individual sources. Rather, States have ''the flexibility to conduct four-factor analyses for specific sources, groups of sources or even entire source categories, depending on state policy preferences and the specific circumstances of each state.'' 82 FR 3078, January 10, 2017, at page 3088.

[78] See, *e.g.,* Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016) (December 2016), Docket Number EPA–HQ–OAR–2015–0531, at page 186.

that a State ''must include in its implementation plan a description of. . .how the four factors were taken into consideration in selecting the measure for inclusion in its long-term strategy.''

As explained above, 40 CFR 51.308(f)(2)(i) requires States to determine the emission reduction measures for sources that are necessary to make reasonable progress by considering the four factors. Pursuant to 40 CFR 51.308(f)(2), measures that are necessary to make reasonable progress towards the national visibility goal must be included in a State's long-term strategy and in its SIP. If the outcome of a four-factor analysis is that an emissions reduction measure is necessary to make reasonable progress towards remedying existing or preventing future anthropogenic visibility impairment, that measure must be included in the SIP.

The following paragraphs describe how the Alaska regional haze plan submission addresses the requirements of 40 CFR 51.308(f)(2) and summarize the EPA's evaluation.

1. Alaska Focus on Sulfur Dioxide Emissions

In the regional haze plan for the first implementation period, Alaska evaluated both NO_X and SO_2 potential contributions to haze species at Alaska Class I areas. In the regional haze plan for the second implementation period, Alaska provided data that showed ammonium sulfate is the dominant haze species, comprising approximately 60% of the annual average light extinction composition on the 20% most impaired days.[79] When looking at the most anthropogenically impaired days, Alaska estimated ammonium sulfate comprised over 95% of the annual extinction composition at Alaska Class I areas.[80] Therefore, Alaska focused on SO_2 emissions in the regional haze second implementation period. Based on a review of the submission and a review of IMPROVE data from the FLM Environmental Database,[81] we propose to find that it is reasonable for Alaska to focus on SO_2 emissions in the second implementation period.[82]

2. Alaska Source Selection

Alaska employed a two-step source selection process, as detailed in the submission.[83] In step one, Alaska identified the geographic areas in which a variety of sources may have the potential to impact visibility at Alaska Class I areas. The State relied on HYSPLIT modeling [84] to estimate back trajectories for each IMPROVE station for the most impaired days in 2014 to 2018, and used the back trajectories to perform an Area of Influence (AOI) and Weighted Emissions Potential (WEP) analysis.[85] Step one yielded 26 point and area sources, which Alaska then ranked based on 2014 and 2017 SO_2 emissions and WEP sulfate potential.[86]

In step two, Alaska followed a Q/d methodology, which is a screening method described in the EPA 2019 guidance, where ''Q'' is a source's actual sulfur dioxide emissions, primarily based on the 2017 National Emissions Inventory, and ''d'' is the distance from the source to the nearest Class I area.[87] The sources with SO_2 Q/d values greater than or equal to 1.0 were selected by Alaska for further analysis.[88]

We note that, as stated in the clarification letter, the 2022 regional haze plan submission used 2017 emissions inventory data to select the University of Alaska Fairbanks Campus Power Plant as a source for further evaluation, based on a Q/d value of 1.4. However, the submission failed to account for the fact that, in 2019, the original coal-fired boilers at the power plant were replaced with a new, circulating fluidized bed coal-fired boiler equipped with a limestone injection system to control SO_2 emissions.[89] The source's 2020 SO_2 emissions as reported to the 2020 National Emissions Inventory were approximately 20.6 tons, and 2023 emissions were just 7.4 tons.[90] Because the source is estimated to be 117 kilometers from Denali National Park, the updated Q/d values for the University of Alaska Fairbanks Campus Power Plant for both 2020 and 2023 fall below the State's screening threshold of 1.0.[91] Accounting for this update, the final sources selected by Alaska for further analysis are listed in the following Table 4.

TABLE 4—ALASKA SELECTED SOURCES [92]

Source	Class I area	Distance (d) (km)	2017 SO_2 (Q) (tpy)	SO_2 Q/d
Healy Power Plant	Denali National Park	6	296.4	49.4
Eielson Combined Heating and Power Plant	Denali National Park	133	262.8	2.0
Chena Power Plant	Denali National Park	119	627.6	5.3
Fort Wainwright Central Heating and Power Plant	Denali National Park	119	460.0	3.9
North Pole Power Plant	Denali National Park	122	247.2	2.0

[79] Alaska submission, Section III.K.13 Combined Sections, Figure III.K.13.F–2.

[80] *Id.* Figure III.K.13.F–3.

[81] Annual average extinction composition for the years 2000 through 2021 for DENA1, SIME1, and TUXE1. See ''210 EPA Alaska Sulfate Nitrate Alaska IMPROVE Stations.xls'' in the docket for this action. Data pulled from FED AQRV Summary—Light Extinction Composition—Product #XAQR_BCSB_ANYR. FLM Environmental Database (FED); CSU and the Cooperative Institute for Research in the Atmosphere (CIRA), May 23, 2023.

[82] EPA 2019 Guidance at page 11. See also the EPA's Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program, U.S. Environmental Protection Agency, EPA–454/R–18–010, December 2018. Page 12, Step 3.a.

[83] Alaska submission, Combined Section III.K.13, Pages III.K.13.F–1 through F–12.

[84] Hybrid Single-Particle Lagrangian Integrated Trajectory (HYSPLIT) model, developed by the National Oceanic and Atmospheric Administration Air Resources Lab.

[85] Alaska submission, Appendix III.K.13.G. Modeling.

[86] Alaska submission, Combined Section III.K.13, Pages III.K.13.F–5 through F–12 and Appendix III.K.F-Part-1.

[87] Alaska used 2017 National Emissions Inventory data for ''Q'' because it was considered by the State to be more accurate than 2014v2 National Emissions Inventory data for the sources being evaluated. Some sources screened in step one were found to have significant differences between 2014 and 2017 actual SO_2 emissions due to changes in operation, fuel use, and emissions reporting. See Alaska submission, Appendix III.K.13.F-Part-1 for more information.

[88] The Alaska submission stated that this threshold metric is appropriate, in part because it is more conservative than the threshold metric used in the initial screening criteria detailed in the FLM Air Quality Related Values 2010 Guidance Document for Prevention of Significant Deterioration permitting (SO_2, NO_X, PM_{10}, and H_2SO_4 combined Q/d greater than 10). Alaska submission, Combined Section III.K.13, Page III.K.13.F–11.

[89] See *https://www.uaf.edu/campusmap/for-visitors/buildings/combined-heat-and-power-plant.php/*.

[90] See *https://echo.epa.gov/*.

[91] 20.6 tons divided by 117 kilometers equals 0.2 Q/d, which is less than 1.0 Q/d. 7.4 tons divided by 117 kilometers equals 0.1 Q/d, which is less than 1.0 Q/d.

[92] Source: Alaska submission, Combined Section III.K.13, Table III.K.13.F–8.

As shown in table 4 of this document, the sources selected by Alaska are all power plants with potential visibility impacts at Denali National Park. While Alaska also reviewed sources near the Tuxedni and Simeonof Wilderness Areas, the sources reviewed emitted very little SO_2 and therefore, after applying the source selection methodology used by the State, the sources near the Tuxedni and Simeonof Wilderness Areas screened out.[93] We note there are no sources located near the Bering Sea Wilderness Area because it is extremely remote, undeveloped, and far from industrial activity and human populations.

In the regional haze plan submission, Alaska further supported its source selection by reviewing broader source sectors, including the oil and gas and marine sectors.[94] The main oil and gas facilities in Alaska are in the Cook Inlet and on the North Slope. The Cook Inlet oil and gas platforms are closest to the Tuxedni Wilderness Area, however the submission documented that these platforms already fire low-sulfur fuel gas and ultra-low sulfur diesel (ULSD), and because of low actual SO_2 emissions, none were selected using the State's source selection methodology.[95] The North Slope is extremely remote and distant from Alaska's Class I areas, and these facilities are generally categorized as major stationary sources because they are not connected to a grid and must generate their own power.[96] Due to high distance (d) and low emissions (Q), no oil and gas facilities were selected using the State's source selection methodology.[97] Alaska also noted that commercial marine shipping fuels, as well as aviation and railroad fuels, are regulated at the Federal level.[98] The submission highlighted that recently-implemented Federal and international commercial marine shipping sulfur in fuel restrictions are significant and have the potential to improve visibility in Alaska's Class I areas.

Based on a review of the information provided in the submission, we propose to determine that Alaska adequately documented its review of sources and source selection methodology consistent with 40 CFR 51.308(f)(2)(i).[99]

3. Alaska Control Analyses and Determinations

As stated previously, to address the four statutory factors, the Alaska 2022 regional haze plan relied in part on SO_2 BACT analyses originally conducted and submitted as part of the Fairbanks $PM_{2.5}$ serious nonattainment plan in 2020 and 2021.[100] In 2024, Alaska submitted revisions to the SO_2 BACT analyses to address EPA concerns and to account for more recent vendor quotes and fuel prices.[101] Alaska indicated in the 2025 clarification letter that the updated SO_2 BACT analyses were also intended to satisfy the regional haze four-factor analysis requirements.

Consistent with the EPA 2019 Guidance, it is appropriate for a State to rely on recent SO_2 BACT analyses to also satisfy regional haze four-factor analysis requirements.[102] A BACT analysis is a rigorous pollution control technology review process that makes use of data acquired through vendor quotes and other means to review and select technologically-feasible and cost-effective control technology.[103] Such an analysis is based on a number of factors, including those factors addressed under regional haze—the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources.[104] We note that an important difference between a BACT analysis and a regional haze four-factor analysis for a source is that a BACT analysis is based on a source's potential to emit a particular pollutant, while a four-factor analysis is most often based on a source's actual emissions of that pollutant, which is often lower.[105] For that reason, regional haze four-factor analyses tend to yield higher cost estimates per ton of pollutant removed.

The following paragraphs describe the State's analysis for each selected source and the EPA's evaluation against the requirements of the CAA and the EPA's RHR. We are proposing to concur with Alaska's finding that, because no retrofit SO_2 controls are cost effective for regional haze purposes, existing effective SO_2 controls are already in place, and SO_2 emissions are unlikely to change over time, no SO_2 controls are necessary for reasonable progress in the regional haze second implementation period.

a. Healy Power Plant

i. Background

The Healy Power Plant is an electric generating facility owned and operated by the Golden Valley Electric Association (GVEA), a power-generating cooperative serving interior Alaska. The plant, part of an isolated system operating without connection to an interstate transmission grid, combusts subbituminous coal from the nearby Usibelli Coal Mine. In 2017, the plant emitted 296 tons of SO_2.[106]

The primary units at the Healy Power Plant are two coal-fired steam generators, a 25-megawatt (MW) Foster-Wheeler boiler installed in 1967 (Emissions Unit (EU) 1) and a 54–MW TRW Integrated Entrained Combustion System installed in 1997 and commercially operated starting in 2018 (EU 2). EU 1 was subject to BART requirements for the first regional haze implementation period.[107] The EPA approved Alaska's determination that the existing SO_2 controls, specifically the requirement to limit SO_2 to 0.30 lb/MMBtu (30-day rolling average) using the existing dry sorbent injection (DSI) system, constituted BART for EU 1 (78 FR 10546, February 14, 2013).[108]

EU 2, originally called the Healy Clean Coal Project, was developed as a demonstration project in partnership

[93] For example, the largest emitting facility near Tuxedni Wilderness emitted 44.7 tons of SO_2 in 2017 and the largest emitting facility near Simeonof Wilderness emitted 2.8 tons of SO_2 in 2017. Alaska submission, Combined Section III.K.13, Page III.K.13.F–7.

[94] Alaska submission, Section III.K.13, Combined Sections, Page III.K.13.H–12.

[95] *Id.,* Page III.K.13.F–8 through F–11 and Alaska submission, Appendix III.K.13.F.

[96] Final Report: 2028 Future Year Oil and Gas Emission Inventory for WESTAR–WRAP States—Scenario #1: Continuation of Historical Trends, by John Grant, Rajashi Parikh, Amnon Bar-Ilan, Ramboll US Corporation. October 2019.

[97] Alaska submission, Combined Section III.K.13, Pages III.K.13.H–13 and H–14.

[98] *Id.,* Pages III.K.H–24 and H–25.

[99] See EPA 2019 Guidance at pages 27 and 28.

[100] Determinations of Attainment by the Attainment Date, Determinations of Failure To Attain by the Attainment Date and Reclassification for Certain Nonattainment Areas for the 2006 24-Hour Fine Particulate Matter National Ambient Air Quality Standards, published May 10, 2017 (82 FR 21711).

[101] The EPA's concerns were detailed in the Agency's proposed disapproval of the plan on January 10, 2023, at 88 FR 1454.

[102] EPA 2019 Guidance at page 23.

[103] See 40 CFR 52.21(b)(12); 40 CFR 52.21(j); 40 CFR 51.1000 (''best available control measure''); U.S. EPA, Office of Air Quality Planning and Standards, New Source Review Workshop Manual, DRAFT, October 1990 at B.1 (''NSR Workshop Manual'').

[104] *Id. See also* 40 CFR 51.1010(a).

[105] See NSR Workshop Manual at B.37; EPA 2019 Guidance at 29.

[106] From the 2017 National Emissions Inventory, available at *https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data/.*

[107] EU 2 was not subject to BART.

[108] The BART determination addressed nitrogen oxides, particulate matter and sulfur dioxide. The BART cost estimate for EU 1 was $29,813 per ton of sulfur dioxide removed for installing and operating a new spray dry absorber system, and $12,033 per ton of sulfur dioxide removed for installing and operating a new wet scrubber system. The cost of optimizing the existing dry sorbent injection system on EU 1 was $4,218 per ton of sulfur dioxide removed.

with the Alaska Legislature, the Alaska Industrial Development and Export Authority (a public corporation of the State of Alaska), and the U.S. Department of Energy Clean Coal Technology Program.[109] The construction of EU 2 was completed in 1997 and first fired coal in 1998, however operations were soon suspended due to technical and operational issues.[110] EU 2 began supplying power commercially in 2018.[111]

We note that, in 2012, GVEA and the Alaska Industrial Development and Export Authority became subject to a Federal consent decree concerning prevention of significant deterioration (PSD) program applicability.[112] If EU 1 continued to operate past 2024, the unit was to be retrofitted with selective catalytic reduction technology to limit NO_X emissions to 0.070 lb/MMBtu (30-day rolling average).[113] The consent decree also required the continued operation of the existing DSI system on EU 1 to limit SO_2 emissions to 0.30 lb/MMBtu (30-day rolling average).[114] For EU 2, the consent decree required the installation of selective catalytic reduction technology to limit NO_X emissions and the continued operation of the existing spray dry absorber system to limit SO_2 emissions to 0.10 lb/MMBtu (30-day rolling average).[115]

ii. Alaska Control Determination

For EU 1, Alaska determined that the unit was effectively controlled, and that it could be excluded from additional control measure review because: (1) the unit was already equipped with DSI technology and (2) the unit already went through a comprehensive BART analysis during the first implementation period.[116]

Alaska relied on the prior BART analysis to determine that additional controls on EU 1 are not necessary for reasonable progress in the second planning period. In the prior BART determination, Alaska evaluated three SO_2 controls: spray dry absorbers, wet scrubbers, and DSI optimization. The State estimated that the incremental cost effectiveness for the addition of a spray dry absorber system was $29,813 per ton of SO_2 removed and for a wet scrubber system was $12,033 per ton of SO_2 removed. Alaska estimated that optimization of the DSI system on EU 1 would cost $4,218 per ton of SO_2 removed.

Alaska speculated that DSI system optimization may be cost-effective upon reevaluation or, alternatively, the unit could meet a 0.20 lb/MMBtu limit without additional controls based on average actual SO_2 emission rate.[117] Therefore, if EU 1 continued to operate, the State provided GVEA with the option to further evaluate optimizing the DSI system, or to take a lower SO_2 limit (0.20 lb/MMBtu (30-day rolling average)).[118]

Subsequent to the 2022 regional haze plan submission, GVEA elected to install selective catalytic reduction on EU 1 and continue operating the unit. Accordingly, Alaska and GVEA evaluated the feasibility of EU 1 meeting a lower SO_2 limit. Alaska determined that EU 1 cannot meet a 0.20 lb/MMBtu SO_2 limit without additional controls or optimizing the existing DSI system.[119] Additionally, Alaska determined that optimizing the DSI system was not necessary for reasonable progress during the second planning period.

The Alaska DEC stated in the clarification letter that the SO_2 BACT analyses conducted under the Fairbanks $PM_{2.5}$ nonattainment plan corroborated what Alaska had found in the prior BART determination for EU 1—that additional SO_2 reductions would be cost prohibitive. Information in the updated 2024 SO_2 BACT analyses confirmed the State's prior determination that a DSI system optimization and retrofit project would not be cost-effective. The State reasoned that optimizing the existing DSI system would have comparable cost effectiveness values to installation of a new system because the total cost would be lower, but the optimized system would not be capable of achieving control efficiencies as high as a new system.[120] Therefore, Alaska determined that the cost effectiveness of optimizing the existing DSI system ranged from over $15,000 per ton of SO_2 removed to over $34,000 per ton of SO_2 removed.[121]

According to Alaska, this information supports a finding that EU 1 remains effectively controlled using the existing DSI system to limit SO_2 to 0.30 lb/MMBtu (30-day rolling average), as specified in the Federal consent decree and as approved as BART in the Alaska regional haze first implementation period plan.[122] Alaska estimated a four-year timeframe to optimize the existing DSI system.[123] The State considered the energy and non-air quality environmental impacts of compliance by including electricity cost attribution, potential for formation of a brown plume from increased sodium bicarbonate injection and additional waste disposal costs. Alaska also considered the remaining useful life of the controls by assuming a 30-year equipment life.[124]

Regarding EU 2, Alaska concluded that the unit remained effectively controlled using the existing spray dry absorber system to limit SO_2 emissions to 0.10 lb/MMBtu (30-day rolling average), as specified in the Federal consent decree.[125]

iii. EPA Evaluation

For EU 1, we concur with the State's finding that the unit is effectively controlled and that optimizing the existing SO_2 controls to meet a lower SO_2 emission limit is not necessary for reasonable progress in the second implementation period. Alaska considered the four statutory factors in making this finding. Alaska reviewed its prior BART cost estimate and more recent information gleaned from the Fairbanks BACT analyses, which were

[109] See *https://www.gvea.com/services/energy/sources-of-power/healy-power-plants/.*

[110] See Healy Operating Permit AQ0173TV03 at page 3, in the Alaska submission, Appendix III.K.13.F-Part 2.

[111] See *https://www.gvea.com/services/energy/sources-of-power/healy-power-plants/.*

[112] *United States* v. *Golden Valley Electric Association and Alaska Industrial Development and Export Authority,* No. 4:12–cv–00025, Consent Decree, November 19, 2012. Alaska submission, Appendix III.K.13.F-Part 2.

[113] Or an alternative nitrogen oxide control technology approved by the EPA.

[114] *United States* v. *Golden Valley Electric Association and Alaska Industrial Development and Export Authority,* No. 4:12–cv–00025, Consent Decree, November 19, 2012. See also condition 44 of Healy Operating Permit AQ0173TVP03. Alaska submission, Appendix III.K.13.F-Part 2.

[115] *Id.* See also condition 45 of Healy Operating Permit AQ0173TVP03. Alaska submission, Appendix III.K.13.F-Part 2.

[116] Alaska submission, Combined Section III.K.13, at page 27; See October 6, 2025, clarification letter in the docket for this action.

[117] *Ibid.* The State based this preliminary finding on the BART analysis conducted during the first implementation period and a review of 2017 through 2019 National Emissions Inventory data collected by the existing continuous emissions monitoring system (CEMS). Alaska found that the average actual SO_2 emission rate for EU 1 was 0.26 lb/MMBtu over this time period.

[118] Alaska submission, Appendix III.K.13.F-Part 2.

[119] See October 6, 2025, clarification letter in the docket for this action, enclosure at page 17.

[120] See October 6, 2025, clarification letter in the docket for this action, enclosure at pages 19 and 20.

[121] *Id.*

[122] *United States* v. *Golden Valley Electric Association and Alaska Industrial Development and Export Authority,* No. 4:12–cv–00025, Consent Decree, November 19, 2012. See also condition 44 of Healy Operating Permit AQ0173TVP03. Alaska submission, Appendix III.K.13.F-Part 2.

[123] See October 6, 2025, clarification letter, in the docket for this action, letter at page 4.

[124] State Air Quality Control Plan, Vol. II, Appendix III.D.7.7–176–182 at *https://www.regulations.gov/document/EPA-R10-OAR-2024-0595-0078 or see file* 127_State_Submission_BACT_Analysis_11_5_2024.pdf at pages 176–182 in the docket for this action.

[125] Alaska submission, Combined Section III.K.13, Table III.K.13.F–22 (Final Determination for GVEA—Healy Power Plant).

based on vendor quotes and methods consistent with the EPA Air Pollution Control Cost Manual. The State considered the energy and non-air quality environmental impacts of compliance by including electricity cost attribution, potential for formation of a brown plume from increased sodium bicarbonate injection and additional waste disposal costs. Alaska used a 30-year equipment life in its cost calculations.[126]

Alaska estimated the time necessary for compliance to be at least four years. Alaska reasonably assumed that GVEA would time any upgrade to the DSI system to coincide with work on the unit to install activated carbon injection ports to ensure compliance with the MATS. Importantly, the requirement to continue operating the DSI system to meet the associated SO_2 limit of 0.30 lb/MMBtu (30-day rolling average) on EU 1 is embodied in a Federal consent decree and title V operating permit and was previously approved by the EPA as BART.

For EU 2, we concur with the State's finding that the requirement to continue operating the spray dry absorber system to meet the associated SO_2 limit of 0.10 lb/MMBtu (30-day rolling average) on EU 2 is an existing effective control, because it is a BACT-level control established as part of a Federal consent decree to resolve issues around PSD applicability.[127] The BACT process takes into consideration the cost of the control, the time necessary to install the control, the non-air quality impacts of the control, and the remaining useful life of the control.[128] The requirement remains embodied in a Federal consent decree and title V operating permit.[129]

b. Eielson Combined Heating and Power Plant

i. Background

The Eielson Air Force Base is located 26 miles southeast of Fairbanks and is comprised of an airfield, housing, office buildings, and supporting facilities. The Eielson Combined Heating and Power Plant is a co-generation plant that provides heat and power to the base. The plant combusts subbituminous coal from the Usibelli Coal Mine and emitted 263 tons of SO_2 in 2017.[130]

The Eielson Combined Heating and Power Plant originally included six stoker type coal-fired boilers, each rated at 160 MMBtu/hr, installed in 1952. In 2010, the Alaska DEC permitted the U.S. Air Force to replace the original boilers in phases. Two of the six original boilers were replaced with modern coal-fired boilers in 2014 and 2016 (EUs 5A and 6A).[131] EUs 5A and 6A are equipped with a DSI system using sodium bicarbonate and are required to limit SO_2 to 0.20 lb/MMBtu (30-day rolling average), consistent with the Federal New Source Performance Standard for Industrial-Commercial-Institutional Steam Generating Units.[132] Four of the original 1950s era boilers continue to operate (EUs 1 through 4).

ii. Alaska Control Determination

For EUs 1 through 4, Alaska provided the U.S. Air Force the option to continue the boiler replacement project, to be completed by December 31, 2024, or submit a four-factor analysis that evaluated retrofit wet scrubbers, spray dry absorber, and DSI systems.[133] The State's clarification letter indicated that the U.S. Air Force submitted a general four-factor analysis concluding that no retrofit SO_2 retrofit controls were cost-effective. DEC revised the cost analyses by: (1) using EPA's April 2024 Retrofit Cost Tool spreadsheet; (2) assuming a retrofit factor of 1.0, (3) assuming a control efficiency of 95% for a wet scrubber and a spray dry absorber, and 98% for DSI, (4) using a waste disposal cost of $30 per ton, and (5) using an operating labor rate of $60 per hour.[134] Using these factors, DEC determined that the cost effectiveness of a wet scrubber and a spray dry absorber exceeded $50,000 per ton of SO_2 removed. DEC also determined that DSI had a cost effectiveness of over $12,000 per ton.[135]

Alaska DEC also compared these cost analyses with the updated SO_2 BACT analysis for similar 1950s era stoker type coal-fired boilers for the nearby Fort Wainwright Central Heating and Power Plant (EUs 1 through 6) that the State recently submitted to the EPA as part of the Fairbanks $PM_{2.5}$ serious nonattainment area plan.

The Fort Wainwright updated SO_2 BACT analysis, which was reviewed by the EPA, revised according to EPA comments, and ultimately included conservative assumptions and recent vendor quotes, considered the cost of compliance, the time necessary for compliance, the energy and non-air quality impacts, and the remaining useful life of the controls.[136] Specifically, Alaska considered the time necessary for compliance to be less than one year for dry sorbent injection and spray dry absorber systems, and approximately three years for a wet flue gas desulfurization system.[137] The State also considered the energy and non-air quality environmental impacts of operating the controls, including electricity cost attribution, potential for formation of ice fog, and possible need for waste and wastewater disposal, and remaining useful life of the controls as estimated in the BACT analysis (30-year equipment life).[138]

Alaska found that dry sorbent injection constituted SO_2 BACT at a cost effectiveness of $6,636 per ton of SO_2 removed, based on potential to emit.[139] Alaska also found that the cost effectiveness of retrofitting with circulating dry scrubbers, wet flue gas desulfurization, and spray dry absorbers ranged from over $13,000 per ton to over $20,000 per ton of SO_2 removed based on potential to emit. As stated in the clarification letter, because the SO_2 BACT analysis was based on the potential to emit 1,470 tons of SO_2 combined from Fort Wainwright EUs 1 through 6, the retrofit costs for Eielson EUs 1 through 4 would be even higher based on lower actual emissions (212 tons of SO_2 combined).[140] Alaska therefore concluded that retrofitting Eielson EUs 1 through 4 with any SO_2 controls would be cost prohibitive for the regional haze second implementation period.

For Eielson EUs 5A and 6A, Alaska determined that the existing SO_2 limit of

[126] See October 6, 2025, clarification letter in the docket for this action, enclosure at page 19.

[127] EPA 2019 guidance at pages 22 and 23.

[128] 40 CFR 52.21(b)(12); NSR Workshop Manual, at B.6.

[129] *United States* v. *Golden Valley Electric Association and Alaska Industrial Development and Export Authority,* No. 4:12–cv–00025, Consent Decree, November 19, 2012. See also conditions 44 and 45 of Healy Operating Permit AQ0173TVP03. See also Alaska submission, Appendix III.K.13.F-Part 2.

[130] From the 2017 National Emissions Inventory, available at *https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data.*

[131] See Minor Permit AQ0264MSS05, issued August 9, 2010, in the docket for this action. According to the Alaska submission, the U.S. Air Force estimated that all six boilers would be replaced by 2020. To date, two of the boilers were replaced. See Alaska submission, Combined Section III.K.13, Pages III.K.13.F–32 through F–40.

[132] 40 CFR part 60, subpart Db. Eielson Air Force Base, Air Quality Operating Permit No. AQ0264TVP02, April 15, 2013, Condition 54.

[133] Alaska submission, Combined Section III.K.13, Table III.K.13.F–30.

[134] See October 6, 2025, clarification letter in the docket for this action, enclosure at pages 34 and 35.

[135] Id. at page 35.

[136] See State Air Quality Control Plan, Vol. II, Appendix III.D.7.7–225–229 at *https://www.regulations.gov/document/EPA-R10-OAR-2024-0595-0078* or see file 127_State_Submission_BACT_Analysis_11_5_2024.pdf at pages 225–229 in the docket for this action.

[137] *Id.;* See October 6, 2025, clarification letter in the docket for this action, enclosure at pages 35 and 36.

[138] *Id.*

[139] *Id.*

[140] 2023 actual emissions.

0.20 lb/MMBtu (30-day rolling average) is an existing effective control.[141] Alaska further concluded that, while it may be technically feasible to improve the efficiency of the existing DSI system, actual emissions from EUs 5A and 6A have been extremely low (5.9 tons in 2017, 22 tons in 2018, and 3.7 tons in 2019), and therefore work to further reduce emissions would not be cost-effective.[142] Alaska stated in the clarification letter that the 0.20 lb/MMBtu (30-day rolling average) limit is not necessary for reasonable progress because actual emissions from EUs 5A and 6A have been consistently low with little variation and because the limit is already embodied in the Federal New Source Performance Standard for Industrial-Commercial-Institutional Steam Generating Units.[143]

iii. EPA Evaluation

For Eielson EUs 1 through 4, we propose to approve the State's finding that no SO_2 controls are necessary for reasonable progress, based on the State's consideration of the four factors. Alaska considered cost by conducting new analyses and reviewing BACT analysis data for similar units at the nearby Fort Wainwright.[144] As discussed in the preceding paragraphs, Alaska considered the cost of compliance, time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and remaining useful life of the controls.[145] The BACT process takes into consideration the cost of the control, the time necessary to install the control, the non-air quality impacts of the control, and the remaining useful life of the control.[146]

With respect to EUs 5A and 6A, we concur with the State's finding that the existing requirement to limit SO_2 emissions to 0.20 lb/MMBtu (30-day rolling average) is not necessary for reasonable progress. These units are currently subject to the applicable SO_2 limit in the Federal New Source Performance Standard for Industrial-Commercial-Institutional Steam Generating Units.[147] Actual emissions from EUs 5A and 6A have been consistently low with little variation, therefore, we expect SO_2 emissions from EUs 5A and 6A are unlikely to increase over time. Between 2014 and 2019, SO_2 emissions from all coal-fired boilers at Eielson ranged between 211.77 tons per year and 267.3 tons per year, with a general downward trend.[148] In addition, EUs 1–4 and 5A and 6A are subject to a coal combustion limit of 220,000 tons per 12 consecutive months.[149]

c. Chena Power Plant

i. Background

The Chena Power Plant is a co-generation plant owned and operated by Aurora Energy, LLC. The plant, part of an isolated power-generating system operating without connection to an interstate transmission grid, fires subbituminous coal from the Usibelli Coal Mine and emitted 628 tons of SO_2 in 2017.[150] The Chena Power Plant consists of four coal-fired boilers (EUs 4 through 7) that produce steam for district heating and electricity in the city of Fairbanks. EUs 4, 5, and 6, installed in the early 1950s, are overfeed traveling grate stoker type boilers rated at 76 MMBtu/hr each. EU 7, installed in 1970, is a spreader-stoker type boiler rated at 269 MMBtu/hr. EUs 4 through 7 were subject to SO_2 BACT as part of the Fairbanks $PM_{2.5}$ nonattainment area plan, as summarized in the following paragraphs.

ii. Alaska Control Determination

For EUs 4 through 7, Alaska determined based on recent SO_2 BACT analyses that no retrofit SO_2 controls at Chena Power Plant EUs 4 through 7 are necessary for reasonable progress in the second implementation period. Alaska relied on the SO_2 BACT analysis conducted for these units as part of the Fairbanks $PM_{2.5}$ nonattainment area plan [151] to also satisfy the regional haze plan four-factor analysis requirements.[152] The Alaska 2022 regional haze plan pointed to the original SO_2 BACT control analysis and determination (limiting the sulfur content of coal fired in EUs 4 through 7 to 0.25% sulfur by weight and limiting SO_2 emissions from EUs 4 through 7 to no more than 0.301 lb/MMBtu (3-hour average)).[153] However, the Alaska DEC subsequently withdrew the original SO_2 BACT analysis included in the Fairbanks $PM_{2.5}$ nonattainment area plan.[154]

On December 4, 2024, Alaska submitted revisions to the Fairbanks $PM_{2.5}$ nonattainment area plan that updated the original SO_2 BACT analysis for Chena Power Plant EUs 4 through 7, among other elements.[155] The SO_2 BACT analysis —which was reviewed by the EPA, revised according to EPA comments, and ultimately included conservative assumptions and recent vendor quotes—considered the cost of compliance, the time necessary for compliance, the energy and non-air quality impacts, and the remaining useful life of the controls.[156] Specifically, Alaska considered the time necessary for compliance to be one year for dry sorbent injection and spray dry absorber systems, and three years for a wet flue gas desulfurization system.[157] The State also considered the energy and non-air quality environmental impacts of operating the controls, including ash disposal and wastewater disposal requirements, and remaining useful life of the controls as estimated in the BACT analysis (30-year equipment life).[158] The updated BACT analysis indicated that the least costly SO_2 control, DSI, was estimated to cost $13,368 per ton of SO_2 reduced, based on potential to emit.[159] The updated analysis also indicated that wet flue gas desulfurization and spray dry absorbers would be more costly. Alaska therefore concluded that additional SO_2 controls

[141] Alaska submission, Combined Section III.K.13, Table III.K.13.F–30.

[142] *Id.*

[143] 40 CFR part 60, subpart Db. Eielson Air Force Base, Air Quality Operating Permit No. AQ0264TVP02, April 15, 2013, Condition 54; See October 6, 2025, clarification letter in the docket for this action, enclosure at page 37.

[144] See the Fort Wainwright Central Heating and Power Plant SO_2 reduction analysis report, May 21, 2021, in the docket for this action or at *https://www.regulations.gov/document/EPA-R10-OAR-2022-0115-0251* and State Air Quality Control Plan, Vol. II, Appendix III.D.7.7–225–229 at *https://www.regulations.gov/document/EPA-R10-OAR-2024-0595-0078* or see file 127_State_Submission_BACT_Analysis_11_5_2024.pdf at pages 225–229 in the docket for this action.

[145] *Ibid.*

[146] 40 CFR 52.21(b)(12); NSR Workshop Manual, at B.6.

[147] 40 CFR part 60, subpart Db; Eielson Air Force Base, Air Quality Operating Permit No. AQ0264TVP02, April 15, 2013, Condition 54.

[148] See October 6, 2025, clarification letter in the docket for this action, enclosure at page 30.

[149] Air Quality Operating Permit, Permit No. AQ0264TVP02, Rev. 2, November 10, 2014, Condition 35.1. This condition effectively caps the SO_2 emissions from the central heat and power plant. Note, Eielson requested this limit to avoid classification as a major source of hazardous air pollutants.

[150] From the 2017 National Emissions Inventory, available at *https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data/.*

[151] Fairbanks $PM_{2.5}$ serious area SIP revisions submitted on December 13, 2019, and December 15, 2020.

[152] Alaska submission, Combined Section III.K.13, Pages III.K.13.F–29 through 32.

[153] *Id.,* Pages III.K.13.F–29 through 32.

[154] See Alaska BACT withdrawal letter dated September 26, 2023, in the docket for this action.

[155] State Air Quality Control Plan, Vol. II, Appendix III.D.7.7–176–182 at *https://www.regulations.gov/document/EPA-R10-OAR-2024-0595-0078* or see file 127_State_Submission_BACT_Analysis_11_5_2024.pdf at pages 176–182 in the docket for this action.

[156] *Ibid.*

[157] *Ibid.*

[158] *Ibid.*

[159] *Ibid.*

were not economically feasible as BACT.

Based on the updated SO_2 BACT analysis, Alaska found no retrofit SO_2 controls at Chena Power Plant EUs 4 through 7 to be necessary for reasonable progress in the second implementation period.

iii. EPA Evaluation

Relying on recent SO_2 BACT analyses to also satisfy regional haze requirements is appropriate and consistent with the EPA 2019 Guidance.[160] We concur with the State's finding that no SO_2 controls are necessary for reasonable progress, based on the State's reasonable consideration of the four factors. Alaska's BACT analysis for dry sorbent injection is based on a site-specific vendor cost estimate.[161] Additionally, the State noted that there is limited available land at the power plant for construction of larger SO_2 controls, such as wet scrubbers.[162] As part of its SO_2 BACT analysis described in the previous paragraphs, the State considered the energy and non-air quality impacts of installing dry sorbent injection, the time necessary to install the controls, and the remaining useful life of the controls. We acknowledge that the 2022 regional haze plan indicated the State's original SO_2 BACT coal sulfur limit also satisfied reasonable progress requirements, however, we believe this coal sulfur limit is not necessary for reasonable progress, because the plant burns coal exclusively from the Usibelli Coal Mine in Healy, Alaska. The coal sulfur content is thus inherent to the type of coal from this mine.[163]

d. Fort Wainwright Central Heating and Power Plant

i. Background

Fort Wainwright is a U.S. Army base located in Fairbanks, Alaska. The Fort Wainwright Central Heating and Power Plant provides heat and power to the base. The plant combusts subbituminous coal from the Usibelli Coal Mine and emitted a total of 460 tons of sulfur dioxide in 2017.[164]

The Fort Wainwright Central Heating and Power Plant is made up of six spreader-stoker type coal-fired boilers installed in 1953, each rated at 230 MMBtu/hr, that produce steam to heat and power the base (EUs 1 through 6). The plant is owned and operated by Doyon Utilities, LLC, a subsidiary of Doyon Limited, the regional Alaska Native corporation for Interior Alaska. EUs 1 through 6 were subject to SO_2 BACT as part of the Fairbanks $PM_{2.5}$ nonattainment area plan, as summarized in the following paragraphs.

ii. Alaska Control Determination

For EUs 1 through 6, Alaska determined based on recent SO_2 BACT analyses conducted for these units as part of the Fairbanks $PM_{2.5}$ nonattainment area plan [165] that no SO_2 emissions controls are necessary for reasonable progress. Alaska based this decision on SO_2 BACT determinations included in its latest SIP submission for the Fairbanks $PM_{2.5}$ Nonattainment area. Prior to this SIP submission, Alaska had determined that installation of a new dry sorbent injection system to meet a 0.12 lb/MMBtu SO_2 emissions limit (averaged over a 3-hour period) was BACT for EUs 1 through 6. In its 2022 regional haze plan submission, Alaska purported to rely on this prior SO_2 BACT determination to satisfy, in part, regional haze requirements on EUs 1 through 6.[166] However, the Alaska DEC withdrew the SO_2 BACT analysis.[167]

On December 4, 2024, Alaska submitted revisions to the Fairbanks $PM_{2.5}$ nonattainment area plan that included an updated SO_2 BACT analysis for the Fort Wainwright Central Heating and Power Plant EUs 1 through 6, among other elements.[168]

The SO_2 BACT analysis was reviewed by the EPA, revised according to EPA comments, and ultimately included conservative assumptions and recent vendor quotes.[169] Based on the updated analysis, Alaska concluded that dry sorbent injection constituted SO_2 BACT at a cost effectiveness of $6,636 per ton of SO_2 removed, based on potential to emit.[170] The Alaska DEC also found that the cost effectiveness of retrofitting with circulating dry scrubbers, wet flue gas desulfurization, and spray-dry adsorbers ranged from over $13,000 per ton to over $20,000 per ton of SO_2 removed based on potential to emit. In addition, as stated in the clarification letter, because the Fort Wainwright SO_2 BACT analysis was based on the potential to emit 1,470 tons of SO_2 combined from EUs 1 through 6, Alaska found that the retrofit cost per ton reduced based on actual emissions would triple.[171] Alaska assumed a remaining useful life of 30 years for circulating dry scrubbers, wet flue gas desulfurization, spray-dry adsorbers, and dry sorbent injection.[172] Regarding energy and non-air quality impacts, the State determined that wet flue gas desulfurization consumed the most energy due to reagent preparation, such as grinding limestone.[173] The dry systems (dry sorbent injunction and circulating dry scrubbers) required additional energy due to pressure drop from pulse jet fabric filters.[174] According to Alaska, wet scrubbers also demand significant water, which could lead to potential ice fog formation.[175] These systems also produce wastewater.[176] The dry systems have the potential to increase solid waste generation due to sorbent disposal.[177] Alaska considered the time necessary to install controls to be less than one year for dry sorbent injection and spray dry absorber systems, and approximately three years for a wet flue gas desulfurization system, based on the BACT analysis.[178] Alaska ultimately found that retrofitting Fort Wainwright EUs 1 through 6 with any SO_2 controls would be cost prohibitive for the regional haze second implementation period.

[160] At page 23.

[161] State Air Quality Control Plan, Vol. II, Appendix III.D.7.7–176–182 at *https://www.regulations.gov/document/EPA-R10-OAR-2024-0595-0078* or see file 127_State_Submission_BACT_Analysis_11_5_2024.pdf at pages 176–182 in the docket for this action.

[162] *Ibid.*

[163] State Air Quality Control Plan, Appendix III.D.7.7–75 (''the Usibelli Coal Mine is the source of all coal marketed and burned in Fairbanks. Their factsheet73 indicates the sulfur content of coal from the Healy mine is typically 0.2% with a range of 0.08%–0.28%. The Healy mine supplies the coal burned in Fairbanks.'').

[164] From the 2017 National Emissions Inventory, available at *https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data/.*

[165] Fairbanks $PM_{2.5}$ serious area SIP revisions submitted on December 13, 2019, and December 15, 2020.

[166] *Ibid.*

[167] See Alaska BACT withdrawal letter dated September 26, 2023, in the docket for this action.

[168] State Air Quality Control Plan, Vol. II, Appendix III.D.7.7–202 at *https://www.regulations.gov/document/EPA-R10-OAR-2024-0595-0078* or see file 127_State_Submission_BACT_Analysis_11_5_2024.pdf at page 202 in the docket for this action.

[169] See State Air Quality Control Plan, Vol. II, Appendix III.D.7.7–225–229 at *https://www.regulations.gov/document/EPA-R10-OAR-2024-0595-0078* or see file 127_State_Submission_BACT_Analysis_11_5_2024.pdf at pages 225–229 in the docket for this action.

[170] *Ibid.*

[171] See October 6, 2025, clarification letter in the docket for this action, enclosure at page 42. 2023 actual emissions.

[172] See Final CHPP SO_2 Reduction Analysis Fort Wainwright, B&V Project No. 406418, Prepared for Doyon Utilities, 25 August 2021 at ES–3, available at *https://www.regulations.gov/document/EPA-R10-OAR-2022-0115-0249/.*

[173] *Id.* at 6–1.

[174] *Id.*

[175] *Id.* at 6–2—6–7.

[176] *Id.* at 6–8.

[177] *Id.* at 6–1; 6–8.

[178] *Ibid.*

iii. EPA Evaluation

As stated previously, relying on recent SO_2 BACT analyses to also satisfy regional haze requirements is appropriate and consistent with the EPA 2019 Guidance.[179] We concur with the State's finding that no SO_2 controls are necessary for reasonable progress, based on Alaska's reasonable evaluation of the four statutory factors. Alaska considered cost by reviewing BACT analysis data originally developed by the facility and updated by the State to address EPA comments and to include recent vendor quotes for various SO_2 emissions controls, including dry sorbent injection and wet flue gas desulfurization.[180] Alaska considered the time necessary to install controls to be less than one year for dry sorbent injection and spray dry absorber systems, and approximately three years for a wet flue gas desulfurization system, based on the BACT analysis.[181] The State also considered the energy and non-air quality environmental impacts of operating the controls, including electricity cost attribution, potential for formation of ice fog and possible need for waste and wastewater disposal. Finally, Alaska determined the remaining useful life of the controls as estimated in the BACT analysis (30-year equipment life).[182]

e. North Pole Power Plant

i. Background

The North Pole Power Plant is an electric generating facility owned and operated by Golden Valley Electric Association (GVEA). The plant is located in North Pole, near Fairbanks, and is part of an isolated power-generating system operating without connection to an interstate transmission grid. The plant combusts fuel oil supplied by the local PetroStar Refinery and in 2017 emitted 247 tons of SO_2.[183]

The primary units at the North Pole Power Plant include two fuel oil-fired GE Frame 7000 Series regenerative simple cycle gas combustion turbines rated at 672 MMBtu/hr each (EUs 1 and 2) that burn high sulfur diesel and two GE LM600PC combined cycle gas combustion turbines rated at 455 MMBtu/hr each (EUs 5 and 6) that burn light straight run, a low sulfur naphtha fuel. We note that EU 6 is not yet operational. EUs 1, 2, 5 and 6 were subject to SO_2 BACT as part of the Fairbanks $PM_{2.5}$ nonattainment area plan, as summarized in the following paragraphs.

ii. Alaska Control Determination

Based on the State's recent SO_2 BACT analyses and consideration of the four factors, Alaska determined that no SO_2 emission controls are necessary on EUs 1, 2, 5 or 6 in the second planning period. In its 2022 regional haze plan submission, Alaska relied in part on older SO_2 BACT analysis conducted and documented for EUs 1, 2, 5 and 6 as part of the Fairbanks $PM_{2.5}$ nonattainment area plan, as well as supplemental four factor analyses to satisfy the regional haze requirements for the second planning period. Specifically, Alaska previously determined the following with respect to regional haze requirements at the North Pole Power Plant:

- *EUs 1 and 2:* Switching to Alaska No. 1 fuel oil (1000 ppmw) in EUs 1 and 2 from April through September was necessary for reasonable progress (provided GVEA can purchase No. 1 fuel oil from the Petro Star North Pole Refinery).[184]
- *EUs 5 and 6:* Switching from 50 ppmw sulfur naphtha or light straight run to 15 ppmw ULSD in EUs 5 and 6 was not cost-effective (greater than $1 million per ton SO_2 removed).[185]

Based on updated SO_2 BACT analyses, Alaska determined that no controls at the North Pole Power Plant are necessary for reasonable progress in the second planning period.

On December 4, 2024, as part of the revisions to the Fairbanks $PM_{2.5}$ nonattainment area plan to address the EPA's partial disapproval action, Alaska included an updated SO_2 BACT analysis for North Pole Power Plant EUs 1 and 2, among other elements.[186] The Alaska DEC determined in this updated analysis that requiring EUs 1 and 2 to fire ULSD would cost approximately $6,629 to $13,932 per ton for EU 1 based on potential to emit and between $6,723 and $14,026 per ton for EU 2, depending on fuel price.[187]

The State also noted that there is no local supply of ULSD in Fairbanks. Therefore, in order to comply with a requirement to burn only ULSD in EUs 1, 2, 5 and 6, GVEA would have to source the ULSD from southern Alaska, *e.g.,* Valdez.[188] Increased highway or rail trucking of ULSD to Fairbanks increases on-road and rail air pollutant emissions and the potential for fuel spills.[189] Both of these could be ameliorated by construction of a local tank farm. GVEA commissioned a cost and feasibility study of constructing a tank farm as part of the Fairbanks $PM_{2.5}$ nonattainment area plan.[190] The State incorporated the capital costs from this estimate into its cost-effectiveness calculations discussed previously. The Alaska DEC determined that GVEA would need three years to comply with lower sulfur fuel content requirements.[191]

In the 2025 clarification letter, Alaska updated the cost analyses based on the latest price per gallon of ULSD and No. 1 fuel oil. For both EU 1 and EU 2, Alaska determined that switching to ULSD would have a cost effectiveness of $29,646 per ton of SO_2 removed and switching to No. 1 fuel oil would have a cost effectiveness of $23,110 per ton of SO_2 removed.[192] Thus, according to Alaska, the updated analysis showed that requiring either ULSD or No. 1 fuel oil was not cost effective. The State also noted that Petro Star is unable to supply GVEA with No. 1 fuel oil because it

[179] EPA 2019 Guidance and page 23.

[180] See the Fort Wainwright Central Heating and Power Plant SO_2 reduction analysis report, May 21, 2021, in the docket for this action or at *https://www.regulations.gov/document/EPA-R10-OAR-2022-0115-0251* and State Air Quality Control Plan, Vol. II, Appendix III.D.7.7–225–229 at *https://www.regulations.gov/document/EPA-R10-OAR-2024-0595-0078* or see file 127_State_Submission_BACT_Analysis_11_5_2024.pdf at pages 225–229 in the docket for this action.

[181] *Ibid.*

[182] *Ibid.*

[183] From the 2017 National Emissions Inventory, available at *https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data/.*

[184] *Id.* Page III.K.13.F–19. This finding is predicated on the assumption that GVEA will be able to purchase No. 1 fuel oil from the Petro Star North Pole Refinery. If the North Pole Refinery is not able to supply GVEA with No. 1 fuel oil due to shortages in supply, the North Pole Power Plant may continue to burn No. 2 fuel oil in EUs 1 and 2 until such time as No. 1 fuel oil is again available. The analysis also assumed that EUs 1 and 2 were already subject to a now rescinded requirement to burn ULSD October through March under Alaska Fairbanks $PM_{2.5}$ nonattainment plan.

[185] Based on actual emissions.

[186] See State Air Quality Control Plan, Vol. II, Appendix III.D.7.7–301–307 at *https://www.regulations.gov/document/EPA-R10-OAR-2024-0595-0078* or see file 127_State_Submission_BACT_Analysis_11_5_2024.pdf at pages 301–307 in the docket for this action.

[187] The documentation for this finding can be found at *https://www.regulations.gov/document/EPA-R10-OAR-2024-0595-0078/.*

[188] See Response to Comments Regarding Best Available Control Measure Requirements for Residential and Commercial Fuel Oil Combustion, November 2. 2023 at 3–4, available at *https://www.regulations.gov/document/EPA-R10-OAR-2022-0115-0379/.*

[189] *Id.* at 3–11.

[190] GVEA Alternative BACT November 2018; Attachment 2 Technical Memo from PDC Regarding Bulk Fuel Storage available at *https://www.regulations.gov/document/EPA-R10-OAR-2022-0115-0252/.*

[191] State Air Quality Control Plan, III.D.7.7–79 (November 19, 2019) available at *https://www.regulations.gov/document/EPA-R10-OAR-2022-0115-0076/.*

[192] See October 6, 2025, clarification letter in the docket for this action, enclosure at page 11.

must meet increased local demand.[193] Alaska's Fairbanks $PM_{2.5}$ nonattainment plan restricts the fuel oil sulfur content for residents and business to less than 1,000 ppm.[194] As a result of this requirement, these customers have consumed the majority of the available supply of No. 1 fuel oil in the area.[195]

Alaska also confirmed its prior analysis that requiring USLD at EU 5 would have a cost effectiveness of over $1 million.[196] Alaska thus determined that no controls are necessary on EUs 5 or 6 in the second planning period.

Therefore, based on the updated BACT analysis and updated fuel cost data, the State determined that no SO_2 controls were necessary for reasonable progress in the second implementation period at the North Pole Power Plant.

iii. EPA Evaluation

As previously stated, relying on recent SO_2 BACT analyses to also satisfy regional haze requirements is appropriate and consistent with the EPA 2019 Guidance.[197] We concur with the State's finding that no SO_2 controls are necessary for reasonable progress, based on Alaska's reasonable evaluation of the four statutory factors. Alaska derived the cost of firing lower sulfur fuels based on two primary factors: (1) the cost of building fuel oil storage; and (2) the variability in fuel prices.[198] Currently, there is no local low sulfur fuel oil refining in Fairbanks. Petro Star supplies fuel oil to the region, but its facility lacks desulfurization capabilities. Thus, requiring sources in Fairbanks to fire lower sulfur fuel necessarily means transporting that fuel by truck or rail from southern Alaska. The Alaska DEC pointed out the costs and logistical challenges of doing so. Given these challenges, building out large volume storage in Fairbanks would be necessary to comply with any lower sulfur fuel requirements, *e.g.* ULSD. In its 2024 SIP submission for the Fairbanks $PM_{2.5}$ nonattainment area, Alaska estimated that the cost of switching to ULSD was approximately $13,838 per ton for EU 1, $13,923 per ton for EU 2, and $1,040,822 per ton for EUs 5 and 6.[199] Alaska's most recent cost estimates indicate that the cost of switching to USLD across each of these units is even higher. Thus, Alaska evaluated the cost, energy and non-air quality impacts of building fuel oil storage in Fairbanks, as well as the time needed to construct the storage tanks and their remaining useful life.[200]

Recent developments impacting the cost and availability of Alaska No. 1 fuel oil make firing lower sulfur fuel oil in EUs 1 and 2 impractical and cost prohibitive. The Fairbanks $PM_{2.5}$ nonattainment plan requires home heating oil to meet lower sulfur content requirements, and this control measure has restricted the availability of No. 1 fuel oil for industrial use and caused further variability in fuel oil prices in interior Alaska.[201] Therefore, the State's finding, that current fuel prices suggest a fuel switch to No. 1 fuel oil in EUs 1 and 2 would be cost prohibitive for the regional haze second implementation period, also appears reasonable.

With respect to EUs 5 and 6, we concur with the State's finding that no SO_2 controls are necessary for reasonable progress, based on Alaska's reasonable evaluation of the four statutory factors.[202] The EPA previously reviewed Alaska's determination—that continued use of light straight run constituted SO_2 BACT—as part of its review of the Fairbanks $PM_{2.5}$ nonattainment area plan. This analysis, as well as the analysis in the Alaska regional haze plan, supports the finding that no additional controls are cost effective. Additionally, because light straight run is the normal operating fuel for EUs 5 and 6 and GVEA is under long-term contract to purchase light straight run from Petro Star via direct pipeline, it is reasonable to assume the long-standing, current requirement to fire light straight run (50 ppmw) year-round, except during startup (Jet-A, 300 ppmw), is unlikely to change.[203]

4. Additional Long-Term Strategy Requirements

The consultation requirements of 40 CFR 51.308(f)(2)(ii) provide that States must consult with other States that are reasonably anticipated to contribute to visibility impairment in a Class I area to develop coordinated emission management strategies containing the emission reductions measures that are necessary to make reasonable progress. Section 51.308(f)(2)(ii)(A) and (B) require States to consider the emission reduction measures identified by other States as necessary for reasonable progress and to include agreed upon measures in their SIPs, respectively. Section 51.308(f)(2)(ii)(C) speaks to what happens if States cannot agree on what measures are necessary to make reasonable progress.

Alaska participated in and provided documentation of the WRAP intra- and inter-regional planning organization consultation processes in the submission.[204] Alaska has not identified any other State that is impacting Alaska's Class I areas, and Alaska has not been identified as a contributor to impacts in other States' Class I areas.[205] To address 40 CFR 51.308(f)(2)(ii)(A), (B), and (C), the Alaska DEC participated in the WRAP-facilitated process during which no disagreements were raised by other States with respect to Alaska's planning efforts for the regional haze second implementation period. Considering these facts, we agree that Alaska has adequately satisfied the consultation requirements of 40 CFR 51.308(f)(2)(ii).

The documentation requirement of 40 CFR 51.308(f)(2)(iii) provides that States may meet their obligations to document the technical bases on which they are relying to determine the emission reduction measures that are necessary to make reasonable progress through a regional planning organization, as long as the process has been ''approved by all State participants.'' As explained previously, Alaska relied on WRAP technical information, modeling, and analysis to support development of its long-term strategy as described in the submission.[206] Alaska built on the WRAP technical tools and contracted out additional modeling for purposes of the submission.[207]

Section 51.308(f)(2)(iii) also requires that the emissions information considered to determine the measures

[193] *Id.* Enclosure at page 9.

[194] 18 AAC 50.078; 40 CFR 52.70(c).

[195] See October 6, 2025, clarification letter in the docket for this action, enclosure at page 9.

[196] *Id.* Enclosure at pages 11 and 12.

[197] EPA 2019 Guidance at page 23.

[198] State Air Quality Control Plan, Vol. II, Section III.D.7.7.13.8.5.3 at *https://www.regulations.gov/document/EPA-R10-OAR-2024-0595-0027* or see file 128_State_Submission_Fairbanks_Control_Strategies_11_5_2024.pdf at pages 75–76 in the docket for this action.

[199] *Ibid.*

[200] *Ibid.*

[201] State Air Quality Control Plan, Appendix III.D.7.7 in EPA docket EPA–R10–OAR–2024–0595 or see file 129_State_Submission_Fairbanks_Control_Strategies_Appendix_11_5_2024.pdf at pages 76–84 in the docket for this action.

[202] The documentation for this finding can be found in State Air Quality Control Plan, Vol. II, Appendix III.D.7.7–301–307 at *https://www.regulations.gov/document/EPA-R10-OAR-2024-0595-0078* or see file 127_State_Submission_BACT_Analysis_11_5_2024.pdf at pages 301–307 in the docket for this action.

[203] 130_State_Submission_North_Pole_Power_Plant_Fuel_Information.xlsx in the docket for this action. Note this information was submitted as part of the Fairbanks $PM_{2.5}$ nonattainment plan and may also be found in EPA docket EPA–R10–OAR–2020–0060.

[204] Alaska submission, Combined Section III.K.13, Section III.K.13.K. State, Tribe, and Federal Land Manager Consultation.

[205] *Id.* Page III.K.13.K–3.

[206] *Id.* Section III.K.13.G.

[207] *Ibid.*

that are necessary to make reasonable progress include information on emissions for the most recent year for which the State has submitted triennial emissions data to the EPA (or a more recent year), with a 12-month exemption period for newly submitted data.

The 2017 National Emissions Inventory is considered a representative recent triennial inventory and therefore, the EPA has included in the docket for this action the 2017 National Emissions Inventory data for Alaska.[208] Based on the documentation provided by Alaska and the EPA's supplemental inventory data, we agree that Alaska has adequately satisfied the requirements of 40 CFR 51.308(f)(2)(iii).

5. Five Additional Factors

In developing its long-term strategy, a State must also consider five additional factors set forth at 40 CFR 51.308(f)(2)(iv). The factors are: (1) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (2) Measures to mitigate the impacts of construction activities; (3) Source retirement and replacement schedules; (4) Smoke management practices for agricultural and forestry burning; and (5) Anticipated net effect on visibility over the period of the long-term strategy. The following paragraphs address each of the five additional factors.

a. Emissions Reductions Due to Ongoing Programs

Alaska implements ongoing programs and regulations that protect visibility. Historically, there were specific vistas established as special protection areas in State regulation, including Mt. Deborah and the Alaska Range East, as viewed from approximately the Savage River Campground area, and Denali, Alaska Range, and the Interior Lowlands, as viewed from the vicinity of Wonder Lake, in addition to the Alaska Class I areas.[209] Additionally, Alaska implements a SIP-approved new source review program for both major and minor stationary sources as laid out in Articles 3 and 5 of 18 AAC 50, respectively. Importantly, Federal diesel fuel regulations limit the sulfur content of fuel[210] including fuel powering commercial marine vessels.[211]

The State has implemented a comprehensive $PM_{2.5}$ control program for the Fairbanks nonattainment area, which includes controlling pollutants from residential wood heaters, power plants and other sources in the area.[212] In addition, the submission pointed to Federal mobile source regulations that apply nationwide and that are expected to reduce haze-forming pollutants over time as requirements phase in and fleets turn over.[213]

b. Measures To Mitigate the Impacts of Construction Activities

Alaska's SIP includes measures to mitigate the impacts of construction activities, such as standards to reduce fugitive dust emissions from construction[214] and dust management plans for new construction permitting.[215] The submission stated that the Alaska DEC also reviews and comments on draft environmental impact statements for required dust mitigation plans.[216]

c. Source Retirement and Replacement Schedules

Source retirements and replacements were considered throughout the Alaska submission. The Alaska submission stated that the Harvest Alaska, LLC Drift River Platform/Christy Lee Platform was decommissioned as of October 2019.[217] The Alaska DEC issued a Rescission Request Approval Letter for the source's title V Operating Permit AQ0190TVP03 Revision 1 on December 12, 2019. Additionally, the Alaska submission stated that the U.S. Air Force decommissioned the three 177 MMBtu/hr coal-fired boilers that made up the Clear Space Force Station Combined Heat and Power Plant, located approximately 12 km from Denali National Park.[218] The old boilers were retired in 2016, and the Clear Space Force Station is now connected to the local GVEA power grid. The source emitted 213 tons sulfur dioxide in 2014 and after the shutdown, emitted less than 0.1 tons sulfur dioxide in 2019.[219] Finally, in 2019, the University of Alaska Fairbanks replaced the Campus Power Plant's aging coal-fired boilers with a new coal-fired boiler equipped with an integrated fluidized bed limestone injection system to control SO_2 emissions. Estimated SO_2 emissions fell from 163.8 tpy in 2017 to 20.6 tpy in 2020.[220]

d. Smoke Management Practices

Alaska addressed smoke management in the submission by citing the State's enhanced smoke management practices for agricultural and forestry burning.[221] The enhanced smoke management plan outlines the process, practices, and procedures to manage smoke from prescribed and other open burning. The plan was most recently updated on December 1, 2021.[222] In addition, Alaska's SIP-approved open burning regulations are found at 18 AAC 50.065. The open burning rules address types of open burning within the State and, among other things, limit the materials that may be burned, prescribe how a burn must be conducted, limit smoldering, and prohibit black smoke.

e. Anticipated Net Effect on Visibility

In the submission, Alaska considered the anticipated net effect of projected changes in emissions by discussing the photochemical modeling for the 2018 through 2028 period it conducted in collaboration with the WRAP, the EPA, and the University of Alaska Fairbanks.[223] Emissions inventories in the Alaska submission indicated that anthropogenic SO_2 emissions in Alaska were anticipated to decline significantly through 2028, primarily due to Federal regulation of sulfur in fuel.[224] The submission stated that the overall visibility benefits of these reductions are expected to be offset to some degree by natural sources of SO_2, including wildfires, and the continued transport of international anthropogenic emissions from Asia across the Pacific Ocean.[225]

[208] See Excel spreadsheet of EPA National Emissions Inventory NO_X and SO_2 data trends for Alaska in the docket for this action.

[209] 18 AAC 50.025 Visibility and Special Protection Areas.

[210] See *https://www.epa.gov/diesel-fuel-standards.*

[211] Fuel sulfur limits are codified at 40 CFR part 1043. See 84 FR 69335, December 18, 2019, at page 69336.

[212] Alaska submission, Combined Section III.K.13, Page III.K.13.H–10.

[213] *Id.,* Page III.K.13.H–9.

[214] 18 AAC 50.045(d).

[215] Alaska submission, Combined Section III.K.13, Page III.K.13.H–28.

[216] *Ibid.*

[217] *Id.,* Appendix III.K.13.F–12.

[218] *Id.* Appendix III.K.13.F–10.

[219] *Ibid.*

[220] Based on 2017 and 2020 National Emissions Inventory data.

[221] Alaska submission, Combined Section III.K.13, Page III.K.13.H–28 through H–31.

[222] *Id.,* Page III.K.13.H–30.

[223] *Id.,* Section III.K.13.G.

[224] *Id.,* Section III.K.13.E.

[225] *Id.,* Page III.K.13.H–31.

We find that Alaska has reasonably considered each of the five additional factors and has adequately satisfied the requirements of 40 CFR 51.308(f)(2)(iv).

6. Conclusion

As described in the preceding paragraphs, the EPA proposes to approve the Alaska submission as meeting the long-term strategy requirements of 40 CFR 51.308(f)(2).

F. Reasonable Progress Goals

Section 51.308(f)(3) contains the requirements pertaining to reasonable progress goals for each Class I area. Because Alaska is host to Class I areas, it is subject to both 40 CFR 51.308(f)(3)(i), and potentially, to (ii). Section 51.308(f)(3)(i) requires a State in which a Class I area is located to establish reasonable progress goals—one each for the most impaired and clearest days—reflecting the visibility conditions that will be achieved at the end of the implementation period as a result of the emission limitations, compliance schedules and other measures required under 40 CFR 51.308(f)(2) to be in States' long-term strategies, as well as implementation of other CAA requirements. The long-term strategies as reflected by the reasonable progress goals must provide for an improvement in visibility on the most impaired days relative to the baseline period and ensure no degradation on the clearest days relative to the baseline period.

Section 51.308(f)(3)(ii) applies in circumstances in which a Class I area's reasonable progress goals for the most impaired days represents a slower rate of visibility improvement than the uniform rate of progress calculated under 40 CFR 51.308(f)(1)(vi). Under 40 CFR 51.308 51.308(f)(3)(ii)(A), if the State in which a Class I area is located establishes a reasonable progress goal for the most impaired days that provides for a slower rate of visibility improvement than the uniform rate of progress, the State must demonstrate that there are no additional emission reduction measures for anthropogenic sources or groups of sources in the State that would be reasonable to include in its long-term strategy.

Section 51.308(f)(3)(ii)(B) requires that if a State contains sources that are reasonably anticipated to contribute to visibility impairment in a Class I area in *another* State, and the reasonable progress goal for the most impaired days in that Class I area is above the uniform rate of progress, the upwind State must provide the same demonstration.

1. Adjusted Uniform Rate of Progress

To address 40 CFR 51.308(f)(3)(i), the Alaska submission stated that visibility on the 20% clearest days at all Class I areas in Alaska is projected to be below the baseline visibility condition satisfying the Regional Haze Rule requirement of no degradation in visibility for the clearest days since the baseline period.[226] For the most impaired days, Alaska compared the 2028 RPGs to the EPA-adjusted uniform rate of progress (URP) for 2028. To arrive at the EPA-adjusted URP, the EPA conducting photochemical grid modeling using the CMAQ modeling platform, taking into account certain international anthropogenic sulfate emissions.[227] The EPA's modeling made use of 2016 emissions inventory data to represent emissions for the current visibility period and projected the data to 2028 to represent emissions for the end of the second planning period. The projection was based on predicted economic growth, population expansion or contraction, and other factors.[228] The EPA's adjustments yielded a relatively flat URP.[229] The EPA also ran a 2028 zero-out U.S. anthropogenic emissions CMAQ modeling scenario. This zero-out U.S. model run indicated that even when all U.S. anthropogenic emissions were eliminated from the model, Alaska Class I areas saw essentially no visibility benefit.[230] This EPA zero-out U.S. model run provides additional support for the State's conclusion that no retrofit controls are necessary for reasonable progress in the second implementation period.

To further investigate the role of international and natural emissions, Alaska conducted a supplemental modeling analysis that screened out days with measured high ammonium sulfate, under the assumption that high sulfate is a proxy for volcanic emissions impacts at the monitor, similar to the screening for wildfire contributions using carbon and crustal measurements as proxies.[231] Alaska used this screened data to develop alternative URPs and RPGs on the most impaired days. Alaska stated in the submission that this process was done to attempt to account for volcanic-caused sulfate and resulted in 2028 RPGs below the URP for 2028.[232]

Tables 7 and 8 of this document compare the baseline, 2028 projected RPG, adjusted URP for 2028, and 2028 zero-out U.S. scenario for each Class I area.

TABLE 7—CLEAREST DAYS 2028 PROJECTED REASONABLE PROGRESS GOAL (RPG) COMPARED TO EPA-ADJUSTED UNIFORM RATE OF PROGRESS (URP) FOR 2028 IN DECIVIEWS[233]

IMPROVE station	Baseline	2028 Projected RPG
DENA1	2.43	2.16
TUXE1	3.99	3.79
SIME1	7.90	7.56

TABLE 8—MOST IMPAIRED DAYS 2028 PROJECTED REASONABLE PROGRESS GOAL (RPG) COMPARED TO EPA AND ALASKA-ADJUSTED UNIFORM RATE OF PROGRESS (URP) FOR 2028 IN DECIVIEWS[234]

IMPROVE station	Baseline	2028 Projected RPG	2028 EPA zero-out U.S.	2028 Un-adjusted URP	2028 EPA-adjusted URP	2028 Alaska-adjusted URP
DENA1	7.08	6.53	6.41	6.14	6.46	6.92

[226] *Id.,* Figure II.K.13.I–1.

[227] Technical Support Document for the EPA's Updated 2028 Regional Haze Modeling for Hawaii, Virgin Islands, and Alaska. EPA–454/R–21–007. August 2021.

[228] *Ibid.*

[229] Alaska submission, Combined Section III.K.13, Figure III.K.13.I–2.

[230] Technical Support Document for the EPA's Updated 2028 Regional Haze Modeling for Hawaii, Virgin Islands, and Alaska. EPA–454/R–21–007. August 2021.

[231] Alaska submission, Combined Section III.K.13, Page III.K.13.I–8.

[232] *Id.,* Appendix III.K.13.I.

[233] Source: Alaska submission, Combined Section III.K.13, Table III.K.13.I–1.

TABLE 8—MOST IMPAIRED DAYS 2028 PROJECTED REASONABLE PROGRESS GOAL (RPG) COMPARED TO EPA AND ALASKA-ADJUSTED UNIFORM RATE OF PROGRESS (URP) FOR 2028 IN DECIVIEWS [234]—Continued

IMPROVE station	Baseline	2028 Projected RPG	2028 EPA zero-out U.S.	2028 Un-adjusted URP	2028 EPA-adjusted URP	2028 Alaska-adjusted URP
TUXE1	10.47	10.66	10.01	9.07	10.25	10.37
SIME1	13.67	13.57	14.05	11.60	13.35	13.04

Table 7of this document appears to indicate that the projected 2028 RPGs on the clearest days are below the baseline. Table 8 appears to show that projected 2028 RPGs on the most impaired days are within half of a deciview of the EPA and Alaska adjusted URPs for 2028. We note that when all U.S. anthropogenic emissions were eliminated from the EPA CMAQ modeling (EPA zero-out U.S. for 2028), DENA1 and TUXE1 saw little to no visibility benefit and SIME1 saw a modeled visibility degradation.[235] Alaska included data and modeling in the submission to support the State's assertion that this unusual zero-out modeling result may be explained by unaccounted for natural haze pollutant sources, international emissions contributions, uncertainties with model inputs, and model performance issues, among other factors.[236]

2. URP Glidepath Check

The EPA proposes to find that Alaska's Regional Haze Plan satisfies the requirements in 40 CFR 51.308(f)(3)(ii). While Alaska's 2028 RPG appears to provide for a slower rate of improvement in visibility than the URP, in accordance with 40 CFR 51.308(f)(3)(ii)(A), Alaska: (1) demonstrated that there are no additional emission reduction measures that would be reasonable to include in its long-term strategy; and (2) provided a robust demonstration, including documenting the criteria used to determine which sources or groups of sources were evaluated, detailing how the four factors were taken into consideration in selecting the measures for inclusion in its long-term strategy.

With respect to the Tuxedni and Simeonof Wilderness Areas, Alaska determined that there were no significant anthropogenic sources contributing to visibility in those areas. The State used a conservative Q/d >1.0 threshold for selecting sources. Even with this very low threshold, no sources had a Q/d of >1.0. Alaska verified that the sources potentially impacted these Class I Areas have very low actual emissions. See section IV.E. of this document for more details.

With respect to Denali National Park all sources except for the Healy Power Plant are located over 100 km away from the Park. For the three sources located within the Fairbanks $PM_{2.5}$ nonattainment area, Alaska relied upon extensive SO_2 nonattainment BACT analyses to demonstrate its consideration of the four statutory factors for regional haze. For Eielson Air Force Base and Healy Power Plant, the State determined through consideration of the four factors that the largest emission units were already well controlled.

Moreover, Alaska included evidence indicating that additional SO_2 controls at these sources are unlikely to improve visibility in Denali National Park. Specifically, natural sulfate contributions may not be properly accounted for in the EPA's CMAQ modeling which adds uncertainty to the results of the visibility modeling in Alaska, and emissions inventory information that supports the argument that much of the sulfate contributions to the IMPROVE monitors in Alaska are from source categories outside the State's control (emissions transported from Asia, commercial marine shipping emissions, wildfire emissions, sea salt and oceanic dimethyl sulfide). Therefore, the EPA finds that no additional requirements apply under 40 CFR 51.308(f)(3)(ii)(A).

Under 40 CFR 51.308(f)(3)(ii)(B), a State that contains sources that are reasonably anticipated to contribute to visibility impairment in a Class I area in another State for which a demonstration by the other State is required under 40 CFR 51.308(f)(3)(ii)(B) must demonstrate that there are no additional emission reduction measures that would be reasonable to include in its long-term strategy. Alaska has not identified any other State that is impacting Alaska's Class I areas, and no other State has identified Alaska as a contributor to impacts in other States' Class I areas. Therefore, 40 CFR 51.308(f)(2)(ii)(B) and (C) do not apply to Alaska.

As noted in the RHR at 40 CFR 51.308(f)(3)(iii), the RPGs are not directly enforceable but will be considered by the Administrator in evaluating the adequacy of the measures in the implementation plan in providing for reasonable progress towards achieving natural visibility conditions at that area. As discussed in the preceding paragraphs, we are proposing to approve the Alaska submission for purposes of the long-term strategy control requirements in 40 CFR 51.308(f)(2). Compliance with the RPGs is dependent on compliance with the long-term strategy. Because the RPGs reflect the visibility conditions that are projected to be achieved by the end of the second implementation period as a result of the long-term strategy, we are proposing to approve the submission for the applicable requirements of 40 CFR 51.308(f)(3) relating to reasonable progress goals for Alaska Class I areas.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(f)(4) requires that if the EPA or the affected FLM has advised a State of a need for additional monitoring to assess reasonably attributable visibility impairment at the mandatory Class I area in addition to the monitoring currently being conducted, the State must include in the plan revision an appropriate strategy for evaluating reasonably attributable visibility impairment in the mandatory Class I area by visual observation or other appropriate monitoring techniques. The EPA and the FLMs have not advised Alaska that additional monitoring is needed to assess reasonably attributable visibility impairment. Therefore, the requirements under 40 CFR 51.308(f)(4) are not applicable. Accordingly, the EPA proposes to approve the portions of the Alaska submission relating to 40 CFR 51.308(f)(4).

Section 51.308(f)(6) specifies that each comprehensive revision of a State's regional haze SIP must contain or provide for certain elements, including monitoring strategies, emissions inventories, and any reporting, recordkeeping and other measures needed to assess and report on

[234] Sources: Alaska submission, Combined Section III.K.13, Table III.K.13.I–2.

[235] *Ibid.*

[236] See Alaska submission, Combined Section III.K.13, Section III.K.13.I. Reasonable Progress Goals.

visibility. A main requirement of this subsection is for States with Class I areas to submit monitoring strategies for measuring, characterizing, and reporting on visibility impairment. Compliance with this requirement may be met through participation in the IMPROVE network.

The Alaska submission highlighted the significant challenge of monitoring visibility at extremely remote Class I areas.[237] Reliable power is a concern, in addition to problems with site access and equipment maintenance. Most notably, the Bering Sea Wilderness Area is so remote that visibility monitoring could not be established, making it the only Class I area in the U.S. without an IMPROVE monitor.[238] Despite these challenges, the IMPROVE network in Alaska continues to provide representative data from three IMPROVE monitors, DENA1, SIME1, and KPBO1.

We note that Alaska also operates a protocol site at Trapper Creek near Denali National Park (TRCR1).[239] The submission stated that Alaska established this protocol site to evaluate the long-range transport of pollution into the park from more densely populated and industrialized areas to the south.[240] Data from protocol sites may be compared to data from IMPROVE stations, however, protocol sites are not considered representative of visibility in Class I areas.[241] National Park Service comments submitted on the draft submission and the Alaska DEC responses to those comments make clear that DENA1 is the representative IMPROVE station for Denali National Park, while TRCR1 remains a protocol site.[242]

We propose to find that the visibility monitoring network in Alaska is appropriate for the unique logistical challenges and extremely remote locations of the Class I areas in the State. The network is designed as well as possible to ensure the air monitoring data collected is representative of the air quality within the Alaska Class I areas.

Section 51.308(f)(6)(i) requires SIPs to provide for the establishment of any additional monitoring sites or equipment needed to assess whether reasonable progress goals to address regional haze for all Class I areas within the State are being achieved.

As listed in Table 1 of this document, according to Alaska, visibility data for Alaska's Class I areas are collected at IMPROVE stations currently operated by the National Park Service at Denali National Park Headquarters (DENA1) and the U.S. Fish and Wildlife Service in Sandpoint (SIME1) and the Kenai Peninsula Borough south of Ninilchik (KPBO1). The Alaska DEC also operates the protocol site at Trapper Creek (TRCR1). In addition, several other monitoring networks have sites at the Denali National Park Headquarters. These include the Clean Air Status and Trends Network (CASTNET) monitor, the National Atmospheric Deposition Program, and the National Park Service's meteorological monitoring equipment.[243] Therefore, the EPA finds that Alaska has adequately satisfied 40 CFR 51.308(f)(6)(i).

Section 51.308(f)(6)(ii) requires SIPs to provide for procedures by which monitoring data and other information are used in determining the contribution of emissions from within the State to regional haze visibility impairment at Class I areas both within and outside the State.

Alaska relied on WRAP emissions inventory and technical tools, EPA modeling, and modeling conducted by the University of Alaska Fairbanks to assess the impact of emissions from within the State on Class I areas in the State. The tools and analyses included the EPA's three-dimensional grid-based Eulerian air quality model (CMAQ), a global 3–D chemical transport model (GEOS–CHEM), as well as a variety of data analysis techniques that include back trajectory calculations, area of influence and weighted emissions potential analysis, and the use of monitoring and inventory data. Therefore, we find that Alaska has adequately satisfied the requirements of 40 CFR 51.308(f)(6)(ii).

We note that 40 CFR 51.308(f)(6)(iii) does not apply to Alaska because it has Class I areas. Section 51.308(f)(6)(iv) requires the SIP to provide for the reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the State. To satisfy 40 CFR 51.308(f)(6)(iv), the Alaska regional haze plan states that Alaska complies with this requirement by participating in the IMPROVE program.[244] IMPROVE filters are collected routinely every third day. The IMPROVE sampler consists of four independent modules, each of which incorporates a separate inlet, filter pack, and pump assembly. Modules A, B, and C are equipped with 25 mm diameter filters and 2.5 μm cyclones that allow for sampling of particles with aerodynamic diameters less than 2.5 μm ($PM_{2.5}$). Module D is fitted with a PM_{10} inlet to collect particles with aerodynamic diameters less than 10 μm. Each module contains a filter substrate specific to the planned chemical analysis. All analytical results are compiled by the laboratory responsible for network operations and for initial processing and validation. Data are delivered to the Environmental Protection Agency (EPA) Air Quality System database and to the Cooperative Institute for Research in the Atmosphere (CIRA) Federal Land Manager Environmental Database (FED).[245]

Section 51.308(f)(6)(v) requires SIPs to provide for a Statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment, including emissions for the most recent year for which data are available and estimates of future projected emissions. It also requires a commitment to update the inventory periodically.

The Alaska submission relied on a 2016 inventory to represent emissions for the current visibility period (2014–2018) and a future forecast 2028 inventory to represent the end of the second planning period. Alaska put together the 2028 inventory using a 2016 base dataset adjusted to predict emissions in 2028 based on economic growth, population expansion or contraction, and other factors.[246]

Alaska broke down pollution inventories in the 2016 inventory by source category and air pollutant, including volatile organic compounds (VOCs), carbon monoxide (CO), nitrogen oxides (NO_X), sulfur oxides (SO_X), ammonia (NH_3), and particulate matter (PM_{10} and $PM_{2.5}$).[247] The inventories represented sources and source categories Statewide including

[237] *Id.,* Page III.K.13.C–4.

[238] See *https://vista.cira.colostate.edu/Improve/improve-program/.*

[239] Alaska submission, Combined Section III.K.13, Figures III.K.D–2, D–6, D–10, D–14.

[240] Ibid.

[241] See IMPROVE website at *https://vista.cira.colostate.edu/Improve/.*

[242] Alaska submission, Combined Section III.K.13, Pages III.K.C–1 and C–2.

[243] *Ibid.*

[244] See *https://vista.cira.colostate.edu/Improve/data-acknowledgment/.* IMPROVE is a collaborative association of State, Tribal, and Federal agencies, and international partners. The EPA is the primary funding source, with contracting and research support from the National Park Service. The Air Quality Research Center at the University of California, Davis is the central analytical laboratory, with ion analysis provided by Research Triangle Institute, and carbon analysis provided by Desert Research Institute.

[245] See *https://vista.cira.colostate.edu/Improve/wp-content/uploads/2023/10/IMPROVE_Data_User_Guide_24October2023.pdf/.*

[246] Alaska submission, Combined Section III.K.13, Section III.K.III.E. Emission Inventory.

[247] Carbon monoxide is not considered a haze pollutant, but was included in the datasets because it is one of the criteria pollutants.

stationary point and areas sources, fugitive dust, anthropogenic and natural fires, and on-road and non-road mobile sources. The EPA used these inventories to complete modeling for Alaska using the CMAQ modeling platform. See section IV.F. of this document for more information on the EPA's CMAQ modeling for Alaska.

The Alaska submission noted that Alaska reviewed the raw inventory data, focusing in part on maritime emissions. The maritime industry operates throughout the State and provides critical transportation services to communities.[248] There is also a major international shipping lane through the Gulf of Alaska. In general, marine sector emissions are understood to contribute to sulfate and potential visibility impairment at coastal Class I areas. For future forecasting purposes, the EPA's modeling used 2016 emissions as the 2028 baseline and adjusted for emissions reductions predicted by Federal and international sulfur content limits on commercial marine fuel.[249]

The Alaska submission included tables that illustrated Statewide annual emissions (in tons/year) by source sector and pollutant for the 2016 and projected 2028 inventories and also included anthropogenic emissions fractions.[250] We have summarized the emissions data in Tables 9 and 10 of this document.

TABLE 9—2016 ALASKA EMISSIONS INVENTORY SUMMARY

[Tons per year]

Sector	VOC	CO	NO_X	$PM_{2.5}$	SO_2	NH_3
Agriculture	9	.....	.....	.....	.....	109
Airports	2,008	13,478	4,417	271	576	.....
Rail	17	48	386	11	0	0
Commercial Marine Vessel C1/C2	216	956	6,317	160	11	3
Commercial Marine Vessel C3	1,998	4,310	46,238	3,123	23,736	60
Non-road	8,600	34,126	2,580	358	7	6
On-road	8,228	60,101	11,977	489	33	153
Non-point	8,224	28,956	6,307	2,500	1,510	564
Residential Wood Combustion	820	5,073	90	712	16	34
Fugitive Dust	.....	.....	.....	1,054	.....	.....
Oil and Gas	26,974	13,128	42,779	540	1,702	0
Electric Generating Units	307	2,445	7,793	240	1,304	2
Other Points	800	2,562	7,291	478	1,394	48
Fires	743,060	3,165,511	29,644	262,648	19,646	51,691
Total	801,260	3,330,692	165,819	272,583	49,935	52,670
Anthropogenic Fraction	7%	5%	82%	4%	61%	2%

TABLE 10—2028 ALASKA EMISSIONS INVENTORY SUMMARY

[Tons per year]

Sector	VOC	CO	NO_X	$PM_{2.5}$	SO_2	NH_3
Agriculture	10	.....	.....	.....	.....	119
Airports	1,945	14,915	4,371	257	598	.....
Rail	18	48	391	11	0	0
Small Commercial Marine Vessel (C1/C2)	114	958	3,500	91	4	2
Large Commercial Marine Vessel C3	2,836	6118	59,990	2,430	7.080	47
Non-road	5,297	30,035	1,722	201	4	7
On-road	4,142	30,961	4,789	217	23	136
Non-point	8,043	29,242	6,725	2,518	1,524	650
Residential Wood Combustion	759	4,731	93	647	13	30
Fugitive Dust	.....	.....	.....	1,063	.....	.....
Oil and Gas	26,606	13,101	42,703	537	1,697	0
Electric Generating Units	307	2,445	7,793	240	1,304	2
Other Points	736	2,559	7,269	483	1,404	48
Fires	743,060	3,165,511	29,644	262,648	19,646	51,691
Total	793,874	3,300,624	168,989	271,342	33,296	52,732
Anthropogenic Fraction	6%	4%	82%	3%	41%	2%

[248] Alaska submission, Combined Section III.K.13, Page III.K.13.E–4 and E–5.

[249] The International Marine Organization (IMO) established emission standards for vessels operating in designated waters off the coast of North America. MARPOL Annex VI is codified at 33 U.S.C. 1901 *et seq.* Pursuant to 33 U.S.C. 1907 it is unlawful to act in violation of the MARPOL Protocol. The North American Emissions Control Area (ECA) covers most coastal areas of the United States, including southeast Alaska and the Gulf of Alaska. Vessels operating in the area must burn low sulfur marine fuel, 1,000 ppm sulfur content (0.10% sulfur by weight). As of January 1, 2020, the IMO limited sulfur in fuel for ships operating outside designated ECAs to 5,000 ppm sulfur content (0.50% sulfur by weight. Fuel sulfur limits are codified at 40 CFR part 1043. See 84 FR 69335, 69336 (December 18, 2019). This limit represents a substantial reduction from the prior IMO limit of 35,000 ppm sulfur content (3.5% sulfur by weight).

[250] Alaska submission, Combined Section III.K.13, Tables III.K.13.E–1 and III.K.13.E–2 and Figures III.K.13.E–2 and III.K.13.E–3.

In reviewing these inventories, Alaska noted that fire emissions are several orders of magnitude larger than emissions from other source sectors. Alaska stated that fire emissions appeared steady from 2016 to the 2028 projection, however, there was significant variability from year to year. Regarding individual pollutants, according to Alaska, the most notable change was an estimated 30% decrease in anthropogenic SO_2 emissions from all sources from 2016 to the 2028 projection. Based on Alaska's consideration and analysis of emissions data in the submission, the EPA proposes to find that Alaska has satisfied the emissions information requirement in 40 CFR 51.308(f)(6)(v).

In sum, the EPA proposes to approve Alaska's submission as meeting the requirements of 40 CFR 51.308(f)(6), as described in section IV.G. of this document, including through the State's continued participation in the IMPROVE network and the WRAP and the State's on-going compliance with the Air Emissions Reporting Rule, and that no further elements are necessary at this time for Alaska to assess and report on visibility pursuant to 40 CFR 51.308(f)(6)(vi).

H. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires that periodic comprehensive revisions of States' regional haze plans also address the progress report requirements of 40 CFR 51.308(g)(1) through (5). The purpose of these requirements is to evaluate progress towards the applicable reasonable progress goals for each Class I area within the State and each Class I area outside the State that may be affected by emissions from within that State. Sections 51.308(g)(1) and (2) apply to all States and require a description of the status of implementation of all measures included in a State's first implementation period regional haze plan and a summary of the emission reductions achieved through implementation of those measures. Section 51.308(g)(3) applies only to States with Class I areas within their borders and requires such States to assess current visibility conditions, changes in visibility relative to baseline (2000–2004) visibility conditions, and changes in visibility conditions relative to the period addressed in the first implementation period progress report. Section 51.308(g)(4) applies to all States and requires an analysis tracking changes in emissions of pollutants contributing to visibility impairment from all sources and sectors since the period addressed by the first implementation period progress report. This provision further specifies the year or years through which the analysis must extend depending on the type of source and the platform through which its emission information is reported. Finally, 40 CFR 51.308(g)(5), which also applies to all States, requires an assessment of any significant changes in anthropogenic emissions within or outside the State have occurred since the period addressed by the first implementation period progress report, including whether such changes were anticipated and whether they have limited or impeded expected progress towards reducing emissions and improving visibility.

1. Alaska Progress Report

As part of the submission, Alaska included a progress report covering the second half of the first implementation period. The Alaska submission included five-year averages of the annual values for the most impaired and clearest days and described the status of measures of the long-term strategy from the first implementation period.[251] In the progress report, Alaska concluded that sufficient progress was made toward the reasonable progress goals during the first implementation period.[252] Alaska stated that the most significant reductions in sulfur dioxide emissions occurred as a result of the Federal regulation of sulfur in fuels and the implementation of sulfur fuel limits in Alaska and internationally with respect to commercial marine vessels. Alaska's progress report also included emissions data demonstrating the reductions achieved due to State and Federal controls.[253]

The EPA proposes to find that Alaska has met the requirements of 40 CFR 51.308(g)(1) and (2) because the submission included a progress report that described the measures included in the long-term strategy from the first implementation period, as well as the implementation status and the emission reductions achieved through such implementation. The EPA also proposes to find that Alaska has satisfied the requirements of 40 CFR 51.308(g)(3) because the progress report included summaries of the visibility conditions and the trend of the 5-year averages through 2018 at the Alaska Class I areas.[254]

Pursuant to section 51.308(g)(4), Alaska provided a summary of emissions data from sources and activities, including point, nonpoint, non-road mobile, on-road mobile sources, wildfires, and volcanic emissions.[255] Additionally, the EPA included a spreadsheet that tracks Alaska air pollutant emissions trends data through 2017 for all National Emissions Inventory pollutants.[256] The EPA is proposing to find that this information satisfies the requirements of 51.308(g)(4) and (5). Therefore, the EPA proposes to approve the progress report elements pursuant to Alaska's submission as meeting the requirements of 40 CFR 51.308(f)(5) and (g).

I. Requirements for State and Federal Land Manager Coordination

Section 169A(d) of the CAA requires States to consult with FLMs before holding the public hearing on a proposed regional haze SIP, and to include a summary of the FLM conclusions and recommendations in the notice to the public. Section 51.308(i)(2)'s FLM consultation provision requires a State to provide FLMs with an opportunity for consultation that is early enough in the State's policy analyses of its emission reduction obligation so that information and recommendations provided by the FLMs can meaningfully inform the State's decisions on its long-term strategy. If the consultation has taken place at least 120 days before a public hearing or public comment period, the opportunity for consultation will be deemed early enough, Regardless, the opportunity for consultation must be provided at least sixty days before a public hearing or public comment period at the State level. Section 51.308(i)(2) also provides two substantive topics on which FLMs must be provided an opportunity to discuss with States: assessment of visibility impairment in any Class I area and recommendations on the development and implementation of strategies to address visibility impairment. Section 51.308(i)(3) requires States, in developing their implementation plans, to include a description of how they addressed FLM comments.

1. Alaska Consultation and Coordination

The submission made clear that Alaska consulted and coordinated with the FLMs early and often in the State's

[251] Alaska submission, Combined Section III.K.13, Section III.K.13.J.

[252] *Id.,* Page III.K.13.J–10.

[253] *Id.,* Table III.K.13.J–1.

[254] *Id.,* Figures III.K.13.J–1, J–2, and J–3.

[255] *Id.,* Section III.K.13.E Emissions Inventory.

[256] See Excel spreadsheet of Alaska Air Pollutant Emissions Trends Data in the docket for this action.

planning process.[257] The WRAP hosted State and Federal coordination calls and technical support system development calls on a routine basis and representatives from the Alaska DEC regularly participated. The Alaska DEC gave the FLMs the opportunity to review and comment on both WRAP-produced technical support system data and technical documentation developed by contractors supporting the development of the Alaska submission.[258]

In 2020 and 2021, the Alaska DEC held six consultation meetings with the National Park Service, U.S. Forest Service and U.S. Fish and Wildlife Service.[259] After two years of engagement, the FLMs agreed to a 60-day review period for the draft Alaska submission (from May 27, 2021 through July 27, 2021).[260] Alaska received and responded to comments from the National Park Service, U.S. Fish and Wildlife Service, and the EPA during the FLM review period. On March 30, 2022, Alaska published notice of the availability of the draft submission and public hearing on the Alaska website.[261] The Alaska DEC notified the public, interested parties, the FLMs, air quality contacts from other States and regions, and the EPA of the availability of the State's draft submission.[262] A public hearing on the proposed SIP revision was held on May 10, 2022, via teleconference. Written comments relevant to the proposal were accepted until the close of business May 24, 2022. The Alaska DEC included the comments and responses in the Alaska submission in Appendix III.K.13.K, which may be found in the docket for this action.

Therefore, Alaska complied with the requirements in CAA Section 169A(d) and 40 CFR 51.308(i) to meet with the FLMs prior to holding a public hearing on the SIP revision and provide the public with the FLM's comments and the State's responses. Thus, we propose to approve the submission as meeting the consultation requirements of 40 CFR 51.308(i).

[257] Alaska submission, Combined Section III.K.13, Page III.K.13.K–1.

[258] *Id.,* Page III.K.13.K–1.

[259] *Id.,* Page III.K.13.K–1.

[260] *Id.,* Page III.K.13.K–1.

[261] *Id.,* Page III.K.13.K–4.

[262] On April 5, 2022, Alaska added the FLM comments and responses document to the website after inadvertently leaving the FLM comments and responses off. The Alaska DEC sent an additional notification to alert all interested parties that the FLM comments and responses had been uploaded to the website. The Alaska DEC, the FLMs, and the EPA also met on April 25, 2022, to review the Alaska plan and provide an opportunity to ask technical questions.

2. Alaska Visibility Protection Area

Because Alaska is geographically large, the Alaska DEC established a Visibility Protection Area around Alaska's Class I areas[263] and promulgated regulations requiring stationary sources in the Visibility Protection Area to keep records, report more detailed haze-related data, and potentially implement visibility control measures in the future based on this data. Alaska revised 18 AAC 50.025 (visibility and other special protection areas) to add the new Visibility Protection Area and promulgated a new rule at 18 AAC 50.265 (additional requirements for construction or operation of title V permitted sources and operation of minor stationary sources within the regional haze special protection area) to prescribe the requirements.

In this action, as requested by the State, we are proposing to approve and incorporate by reference into the Alaska SIP at 40 CFR 52.70(c), the two submitted rule sections 18 AAC 50.025 and 18 AAC 50.265, State effective August 21, 2022.

V. Proposed Action

The EPA is proposing to approve the Alaska submission as meeting the following requirements:

- 40 CFR 51.308(f)(1)—calculation of baseline, current, and natural visibility conditions; progress to date; and the uniform rate of progress;
- 40 CFR 51.308(f)(2)—long-term strategy requirements;
- 40 CFR 51.308(f)(3)—reasonable progress goal requirements;
- 40 CFR 51.308(f)(4)—additional monitoring needed to address reasonably attributable visibility impairment;
- 40 CFR 51.308(f)(5)—progress report requirements;
- 40 CFR 51.308(f)(6)—monitoring strategy and other plan requirements;
- 40 CFR 51.308(g)(1) through (5)—progress report requirements; and
- 40 CFR 51.308(i)—State and Federal Land Manager coordination requirements.

The EPA is also proposing to approve, and incorporate by reference into the Alaska SIP at 40 CFR 52.70(c), the following submitted regulations:

[263] The Alaska DEC used point source data, WEP data for NO_X and SO_2, and jurisdictional boundaries to establish the visibility protection area that covers more than 80% of current anthropogenic emissions that may contribute to sulfate and nitrate on the 20% most impaired days. For the detailed methodology used to develop the Visibility Protection Area and boundary, see Alaska submission, Appendix III.K.13.H, Figure III.K.13.H.1 and Table III.K.13.H.2.

- 18 AAC 50.025 Visibility and other special protection areas (defining the geographic scope of the regional haze visibility protection area), State effective August 21, 2022;
- 18 AAC 50.265 Additional requirements for construction or operation of title V permitted sources and operation of minor stationary sources within the regional haze special protection area (requiring fuel-burning and industrial sources located in the visibility protection area to save maintenance records, submit emissions data to the State for purposes of the national emissions inventory, and in each permit application, provide an assessment of whether proposed emissions increases may impact the State's reasonable further progress goals), State effective August 21, 2022.

The EPA is taking this action pursuant to CAA sections 110 and 169A.

VI. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the regulatory provisions described in section V. of this document. The EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document for more information).

VII. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Is not subject to Executive Order 14192 (90 FR 9065, February 6, 2025) because SIP actions are exempt from review under Executive Order 12866;

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a State program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian Tribe has demonstrated that a Tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Consistent with EPA policy, the EPA contacted 24 Tribes located near Alaska Class I areas and offered an opportunity to consult on a government-to-government basis prior to this proposed action in letters dated January 31, 2023. We received no consultation or coordination requests prior to this proposed action. The letters may be found in the docket for this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: October 17, 2025.

Daniel Opalski,

Deputy Regional Administrator, Region 10.

[FR Doc. 2025–19713 Filed 10–29–25; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 90, No. 208
Thursday, October 30, 2025

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

DEPARTMENT OF EDUCATION

National Assessment Governing Board

Committee and Quarterly Board Meetings

AGENCY: National Assessment Governing Board, Department of Education.

ACTION: Notice of open and closed meetings.

SUMMARY: This notice sets forth the agenda, time, and instructions to access the National Assessment Governing Board's (hereafter referred to as the Board or Governing Board) standing committee meetings and quarterly Governing Board meeting. This notice provides information to members of the public who may be interested in attending the meetings and/or providing written comments related to the work of the Governing Board. The meetings will be held either in person and/or virtually, as noted below. Members of the public must register in advance to attend the meetings virtually. A registration link will be posted on the Governing Board's website, *www.nagb.gov,* five (5) business days prior to each meeting.

DATES: The Quarterly Board Meeting will be held on the following dates:

November 20, 2025, from 9:45 a.m. to 3:00 p.m., ET
November 21, 2025, from 8:45 a.m. to 12:30 p.m., ET

ADDRESSES: Hilton Arlington National Landing, 2399 Richmond Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Angela Scott, Designated Federal Officer (DFO) for the Governing Board, 400 Maryland Avenue SW, Washington, DC 20202, telephone: (202) 245–6234, email: *Angela.Scott@ed.gov*.

SUPPLEMENTARY INFORMATION:

Statutory Authority and Function: The Governing Board is established under the National Assessment of Educational Progress Authorization Act (20 U.S.C. 9621). Information on the Governing Board and its work can be found at *www.nagb.gov.* Notice of the meetings is required under section 1009(a)(2) of 5 U.S.C. chapter 10 (commonly known as the Federal Advisory Committee Act). The Governing Board formulates policy for the National Assessment of Educational Progress (NAEP) administered by the National Center for Education Statistics (NCES). The Governing Board's responsibilities include:

(1) selecting the subject areas to be assessed; (2) developing appropriate student achievement levels; (3) developing assessment objectives and testing specifications that produce an assessment that is valid and reliable, and are based on relevant widely accepted professional standards; (4) developing a process for review of the assessment which includes the active participation of teachers, curriculum specialists, local school administrators, parents, and concerned members of the public; (5) designing the methodology of the assessment to ensure that assessment items are valid and reliable, in consultation with appropriate technical experts in measurement and assessment, content and subject matter, sampling, and other technical experts who engage in large scale surveys; (6) measuring student academic achievement in grades 4, 8, and 12 in the authorized academic subjects; (7) developing guidelines for reporting and disseminating results; (8) developing standards and procedures for regional and national comparisons; (9) taking appropriate actions needed to improve the form, content use, and reporting of results of an assessment; and (10) planning and executing the initial public release of NAEP results.

Standing Committee Meetings

The Governing Board's standing committees will meet to conduct regularly scheduled work. Standing committee meeting agendas and meeting materials will be posted on the Governing Board's website, *www.nagb.gov,* no later than five (5) business days prior to the meetings. Minutes of prior standing committee meetings are available at *https://www.nagb.gov/governing-board/quarterly-board-meetings.html*.

Standing Committee Meetings:

Thursday, November 20, 2025

Executive Committee (In-Person Meeting)

8:30 a.m.–9:30 a.m. (ET), Open Session

The Executive Committee will meet in open session on Thursday, November 20, 2025, from 8:30 a.m. to 9:30 a.m. to discuss participation in the Trial Urban District Assessment (TUDA) and trends in state assessments and NAEP.

Assessment Development Committee (In-Person Meeting)

3:15 p.m.–4:45 p.m. (ET), Open Session

The Assessment Development Committee will meet in open session on Thursday, November 20, 2025, from 3:15 p.m. to 4:45 p.m. to discuss the NAEP item development process and next steps for establishing Content Advisory Groups in the NAEP content areas.

Committee on Standards, Design and Methodology (In-Person Meeting)

3:15 p.m.–4:45 p.m. (ET), Open Session

The Committee on Standards, Design and Methodology will meet on Thursday, November 20, 2025, from 3:15 p.m. to 4:45 p.m. to discuss the NAEP School Device Bridge Study.

Reporting and Dissemination Committee (In-Person Meeting)

3:15 p.m.–4:45 p.m. (ET), Open Session

The Reporting and Dissemination Committee will meet on Thursday, November 20, 2025, in open session from 3:15 p.m. to 4:45 p.m. to provide an update on strategic communications efforts, debrief the recent release of the National Assessment of Educational Progress (NAEP) results, review the reporting process, and engage in an open discussion among committee members.

Friday, November 21, 2025

Nominations Committee (In-Person Meeting)

7:30 a.m.–8:30 a.m. (ET), Closed Session

The Nominations Committee will meet in closed session on Friday, November 21, 2025, from 7:30 a.m. to 8:30 a.m., to discuss applications received for Board vacancies for the 2026 nominations cycle as well as the rating process and member assignments for reviewing the applications. The

discussion pertains to information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. As such, the discussions are protected by exemption 6 of the Government Sunshine Act, 5 U.S.C. 552b. 5 U.S.C. 552b(c)(6).

Quarterly Governing Board Meeting

The plenary sessions of the Governing Board's November 2025 quarterly meeting will be held on the following dates and times:

Thursday, November 20, 2025

9:45 a.m.–3:00 p.m. (ET) (Hybrid Meeting)
9:45 a.m.–11:00 a.m. (ET), Open Session
11:15 a.m.–12:15 p.m. (ET), Closed Session
12:15 p.m.–3:00 p.m. (ET) Open Session

On Thursday, November 20, 2025, the meeting will begin in open session at 9:45 a.m. with welcome remarks from Mark White, Chair of the Governing Board, followed by approval of the November 2025 agenda and the August 2025 meeting minutes. At 9:55 a.m., Nicholas Kent, Under Secretary of Education, will deliver remarks and administer the oath of office to new and reappointed members. This will be followed at 10:10 a.m. by a welcome to and remarks from the newly appointed and reappointed members.

At 10:30 a.m., Lesley Muldoon, Executive Director, will provide an update on the Board's work, followed by a report from Matthew Soldner, Acting Commissioner of NCES, at 10:45 a.m. A short break and transition to closed session will occur from 11:00 a.m. to 11:15 a.m. The Board will meet in closed session from 11:15 a.m. to 12:15 p.m. to receive an update on the NAEP budget and 2026 administration from Matt Soldner and Gina Broxterman, Director of Strategic Partnerships at NCES. This session is closed pursuant to Exemption 9(B) of the Government Sunshine Act (5 U.S.C. 552b(c)(9)(B), as it will include confidential budget and procurement information not yet available to the public and disclosure of this confidential information would have an adverse financial effect on the NAEP program by providing detailed proprietary contract costs of the current NAEP contractors to the public and disclose independent government cost estimates for future NAEP assessments if conducted in open session.

The Board will reconvene in open session from 12:15 p.m. to 2:00 p.m. for a discussion on NAEP sampling, followed by a presentation and discussion on the Future Role of Education Research from 2:00 p.m. to 3:00 p.m., with Amber Northern, Senior Advisor, Office of the Secretary. The Thursday plenary session will adjourn at 3:00 p.m.

Friday, November 21, 2025

8:45 a.m.–12:30 p.m. (ET) (Hybrid Meeting)
8:45 a.m.–9:50 a.m. (ET), Open Session
9:55 a.m.–11:10 a.m. (ET), Closed Session
11:15 a.m.–12:30 p.m. (ET), Open Session

The Friday, November 21, 2025, plenary session will begin in open session at 8:45 a.m. with reports on the ongoing work of each standing committee. From 9:15 a.m. to 9:45 a.m. members will engage in an open discussion, followed by a preview of the March 2026 meeting from 9:45 a.m. to 9:50 a.m. After a five-minute break, the Governing Board will meet in closed session from 9:55 a.m. to 11:10 a.m. to discuss the content of the Long-Term Trend assessment. This session must be closed because the presentation will include secure assessment items that cannot be publicly released without compromising their future use. Public disclosure of this confidential information would significantly impede implementation of the assessment program. Such matters are protected by exemption 9(B) of the Government Sunshine Act, 5 U.S.C. 552b. 5 U.S.C. 552b(c)(9)(B).

Following a brief transition, the Board will reconvene in open session from 11:15 a.m. to 12:30 p.m. for a discussion of priorities for the next generation of NAEP assessments, including potential opportunities to leverage artificial intelligence and other ascending technologies to improve the agility, efficiency, and quality of NAEP. The November 2025 Governing Board meeting will adjourn at 12:30 p.m.

Instructions for Accessing and Attending the Meetings

Registration: Members of the public may attend the November 20–21, 2025, meetings of the full Governing Board either in person or virtually. A link to the final meeting agenda and information on how to register for virtual attendance for the open sessions will be posted on the Governing Board's website, *www.nagb.gov,* no later than five (5) business days prior to the meeting. Registration is required to join the meeting virtually.

Public Comment: Written comments related to the work of the Governing Board and its standing committees may be submitted to the attention of the DFO, either via email to *Angela.Scott@ed.gov* or in hard copy to the address listed above in the **FOR FURTHER INFORMATION CONTACT** section. Written comments related to the November 20–21, 2025 Governing Board meeting should be submitted no later than close of business on November 13, 2025, and should reference the relevant agenda item.

Access to Records of the Meeting: Pursuant to 5 U.S.C. 1009, the public may inspect the meeting materials and other Governing Board records at 400 Maryland Avenue SW, Washington, DC 20202, by emailing *Angela.Scott@ed.gov* to schedule an appointment. The official verbatim transcripts of the open meeting sessions will be available for public inspection no later than 30 calendar days following each meeting and will be posted on the Governing Board's website. Requests for the verbatim transcriptions may be made via email to the DFO.

Reasonable Accommodations: The meeting location is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the DFO listed in this notice by close of business on November 13, 2025.

Electronic Access to this Document: The official version of this document is the document published in the **Federal Register**. Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the Adobe website. You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: Pub. L. 107–279, title III, section 301—National Assessment of Educational Progress Authorization Act (20 U.S.C. 9621).

Lesley Muldoon,

Executive Director, National Assessment Governing Board (NAGB), U. S. Department of Education.

[FR Doc. 2025–19704 Filed 10–29–25; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0001 and –0092]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the request to renew the existing information collections described below (OMB Control No. 3064–0001 and –0092). The notices of proposed renewal for these information collections were previously published in the **Federal Register** on July 30, 2025, and August 11, 2025, respectively, allowing for a 60-day comment period. No comments were received in response to the 60-day **Federal Register** notices.

DATES: Comments must be submitted on or before December 1, 2025.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Robert Meiers, Regulatory Attorney, MB–3013, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7 a.m. and 5 p.m.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find these information collections by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Robert Meiers, Regulatory Attorney, *Romeiers@fdic.gov,* MB–3013, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

1. *Title:* Interagency Charter and Federal Deposit Insurance Application.

OMB Number: 3064–0001.

Form Number: 6200–05.

Affected Public: Banks or savings associations wishing to become FDIC-insured depository institutions.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB NO. 3064–0001)

Information Collection (IC) (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Average time per response (HH:MM)	Annual burden (hours)
1. Interagency Charter and Federal Deposit Insurance Application, Form 6200–05 (Mandatory).	Reporting (On Occasion)	21	1	125:00	2,625
Total Annual Burden (Hours)					2,625

Source: FDIC.

General Description of Collection: The Federal Deposit Insurance Act requires financial institutions to apply to the FDIC to obtain deposit insurance. This collection provides FDIC with the information needed to evaluate the applications. There is no change in the method or substance of the collection. The increase in burden hours is the result of economic fluctuation. In particular, the number of respondents has increased while the hours per response and frequency of responses have remained the same.

2. *Title:* Community Reinvestment Act.

OMB Number: 3064–0092.

Form Number: None.

Affected Public: Insured State non-member banks and State savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB NO. 3064–0092)

Information Collection (IC) (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Average time per response (HH:MM)	Annual burden (hours)
1. Request for Designation as a Wholesale or Limited Purpose Bank (Required to Obtain or Retain Benefits).	Reporting (Annual)	1	1	04:00	4
2. Strategic Plan (Voluntary)	Reporting (Annual)	10	1	400:00	4,000
3. Small Business/Small Farm Loan Data (Mandatory)	Reporting (Annual)	356	1	08:00	2,848
4. Community Development Loan Data (Mandatory)	Reporting (Annual)	356	1	13:00	4,628
5. Home Mortgage Loans (Mandatory)	Reporting (Annual)	310	1	253:00	78,430
6. Data on Affiliate Lending (Required to Obtain or Retain Benefits).	Reporting (Annual)	304	1	38:00	11,552
7. Data on Lending by a Consortium or Third Party (Required to Obtain or Retain Benefits).	Reporting (Annual)	115	1	17:00	1,955
8. Assessment Area Data (Mandatory)	Reporting (Annual)	313	1	02:00	626
9. Small Business/Small Farm Loan Register (Mandatory)	Recordkeeping (Annual)	356	1	219:00	77,964
10. Optional Consumer Loan Data (Voluntary)	Recordkeeping (Annual)	10	1	326:00	3,260
11. Other Loan Data (Voluntary)	Recordkeeping (Annual)	56	1	25:00	1,400
12. Content and Availability of Public File (Mandatory)	Third Party Disclosure (Annual)	2,854	1	10:00	28,540
Total Annual Burden (Hours)					215,207

Source: FDIC.

General Description of Collection: The Community Reinvestment Act regulation requires the FDIC to assess the record of banks and thrifts in helping meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations; and to take this record into account in evaluating applications for mergers, branches, and certain other corporate activities. The total estimated annual burden is 215,207 hours, which is a reduction of 16,375 hours from the 2022 submission. This reduction is due to the decrease in the number of FDIC-supervised banks and the changes in methodology for ICs 5, 8, and 11 that resulted in decreased respondent counts for each of ICs 5, 8, and 11.

Request for Comment

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 27, 2025.

Jennifer M. Jones,

Deputy Executive Secretary.

[FR Doc. 2025–19701 Filed 10–29–25; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Tracy Amerson-Rivers, A.P.R.N.; Decision and Order

I. Introduction

On January 30, 2025, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) to Tracy Amerson-Rivers, A.P.R.N., of Houston, Texas (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1. The OSC/ISO informed Registrant of the immediate suspension of her DEA Certificate of Registration, No. MA5242792, pursuant to 21 U.S.C. 824(d), alleging that Registrant's continued registration constitutes ''an imminent danger to the public health or safety.'' *Id.* (quoting 21 U.S.C. 824(d)). The OSC/ISO also proposed the revocation of Registrant's registration, alleging that Registrant's continued registration is inconsistent with the public interest. *Id.* (citing 21 U.S.C. 823(g)(1), 824(a)(4)).[1]

More specifically, the OSC/ISO alleged that Registrant, an advanced practice registered nurse (APRN), issued six controlled substance prescriptions, despite lacking a prescriptive authority agreement with a licensed physician, which is required in Texas for an APRN to prescribe controlled substances. RFAAX 1, at 1–2. The OSC/ISO further alleged that Registrant obtained controlled substances by fraud. *Id.* at 6.[2]

On May 20, 2025, the Government submitted a RFAA requesting that the Agency issue a default final order revoking Registrant's registration. RFAA, at 1–5. After carefully reviewing the entire record and conducting the analysis as set forth in more detail below, the Agency grants the Government's RFAA and revokes Registrant's registration.

II. Default Determination

Under 21 CFR 1301.43, a registrant entitled to a hearing who fails to file a timely hearing request ''within 30 days after the date of receipt of the [OSC/ISO] . . . shall be deemed to have waived their right to a hearing and to be in default'' unless ''good cause'' is established for the failure. 21 CFR 1301.43(a), (c)(1). In the absence of a demonstration of good cause, a registrant who fails to timely file an answer also is ''deemed to have waived their right to a hearing and to be in default.'' 21 CFR 1301.43(c)(2). Unless excused, a default is deemed to constitute ''an admission of the factual allegations of the [OSC/ISO].'' 21 CFR 1301.43(e).

The OSC/ISO notified Registrant of her right to file a written request for hearing and answer, and that if she failed to file such a request and answer, she would be deemed to have waived her right to a hearing and be in default. RFAAX 1, at 7–8. The OSC/ISO further notified Registrant that ''[s]hould [she] request a hearing and fail to timely file an answer, plead, or otherwise defend, . . . [she] shall be deemed to have waived the right to a hearing and to be in default.'' *Id.* at 8 (citing 21 CFR 1301.43(c)(2), (c)(3), (d)).

Registrant filed a timely hearing request, but did not file an answer. RFAA, at 2; RFAAX 3; RFAAX 4, at 1. The matter was assigned to Administrative Law Judge (ALJ) Paul Soeffing, who issued an Order for Prehearing Statements on March 4, 2025, directing Registrant to file a compliant answer by 5:00 p.m. Eastern Time (ET)/4:00 p.m. Central Time (CT) on March 7, 2025. RFAA, at 2; RFAAX 4, at 1–2, 5. On March 10, 2025, the ALJ granted Registrant's request to extend the deadline for filing an answer to 5:00 p.m. ET/4:00 p.m. CT on April 21, 2025. RFAA, at 2; RFAAX 6, at 1–2.

On April 21, 2025, Registrant filed a purported answer. RFAA, at 2; RFAAX 7. On the same day, the ALJ issued an order notifying Registrant of deficiencies that made her purported answer noncompliant. RFAA, at 2–3; RFAAX 8, at 1–2. The ALJ found that Registrant's purported answer failed to ''admit, deny, or state that [she] does not have and is unable to obtain sufficient information to admit or deny'' each allegation of the OSC/ISO, as required by 21 CFR 1301.37(d)(3). RFAAX 8, at 2. The ALJ provided Registrant another opportunity to file a compliant answer by 5:00 p.m. ET/4:00 p.m. CT on April 24, 2025. RFAA, at 2–3; RFAAX 8, at 1–2.

On April 24, 2025, Registrant filed a second purported answer after the filing deadline. RFAA, at 3; RFAAX 9; RFAAX 10, at 1. On April 25, 2025, the ALJ issued an order notifying Registrant that her second purported answer was untimely and remained noncompliant with 21 CFR 1301.37(d)(3). RFAA, at 3; RFAAX 10, at 1–2. The ALJ directed Registrant to submit a filing by 2:00 p.m. ET/1:00 p.m. CT on May 2, 2025, correcting the deficiencies in her second purported answer and showing good cause to accept the untimely second purported answer. RFAA, at 3; RFAAX 10, at 2. Registrant did not respond to this order. RFAA, at 3; RFAAX 11, at 1–2.

On May 2, 2025, the ALJ issued an order terminating the proceeding based on his finding that Registrant had failed to file a timely and compliant answer to the OSC/ISO allegations. *Id.* The ALJ further found that Registrant's failure to submit a timely and compliant answer constituted a waiver of her right to a

[1] According to the OSC/ISO and Agency records, Registrant's registration expired on June 30, 2025. RFAAX 1, at 3. The fact that a registrant allows her registration to expire during the pendency of an administrative enforcement proceeding does not impact the Agency's jurisdiction or prerogative under the Controlled Substances Act to adjudicate the OSC/ISO to finality. *Jeffrey D. Olsen, M.D.,* 84 FR 68474, 68476–79 (2019).

[2] The Agency need not adjudicate the criminal violations alleged in the OSC/ISO. *Ruan* v. *United States,* 597 U.S. 450 (2022) (decided in the context of criminal proceedings).

hearing and that she was in default.[3] RFAAX 11, at 2 (citing 21 CFR 1301.43(c)(1), (e)). The Agency finds that the ALJ did not err in finding Registrant to be in default due to her untimely second purported answer, failure to show good cause to excuse the untimely second purported answer and correct the deficiencies in her purported answers, and failure to respond to the ALJ's April 25 order.

''A default, unless excused, shall be deemed to constitute a waiver of the [registrant's] right to a hearing and an admission of the factual allegations of the [OSC/ISO].'' 21 CFR 1301.43(e). Because Registrant is in default, the Agency finds that Registrant has admitted to the factual allegations in the OSC/ISO. 21 CFR 1301.43(c)(1), (e), (f)(1).

Further, ''[i]n the event that [a registrant] . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] 1316.67.'' 21 CFR 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant's default pursuant to 21 CFR 1301.43(c), (f), and 1301.46. RFAA, at 1, 5; *see also* 21 CFR 1316.67.

III. Findings of Fact

In light of Registrant's default, the Agency finds that the factual allegations in the OSC/ISO are deemed admitted.[4] 21 CFR 1301.43(e). Accordingly, Registrant is deemed to have admitted to each of the following facts.

A. Dispensing Controlled Substances Without Authority

In Texas, an APRN, such as Registrant, may only ''order or prescribe'' drugs that are ''authorized by a prescriptive authority agreement.'' 22 Tex. Admin. Code § 222.4(a)(1)(A); RFAAX 1, at 3. ''A physician may delegate to an [APRN] . . . the act of prescribing or ordering a drug or device as authorized through a prescriptive authority agreement between the physician and the [APRN].'' 22 Tex. Admin. Code § 193.7(a);[5] RFAAX 1, at 3. ''The prescriptive authority agreement is a mechanism by which an APRN is delegated the authority to order or prescribe drugs or devices by a physician.'' 22 Tex. Admin. Code § 222.5(a); RFAAX 1, at 3. An APRN must also possess valid state authority under state law to qualify as a practitioner for purposes of the Controlled Substances Act (CSA) and to issue controlled substance prescriptions. 21 U.S.C. 802(21), 823(g)(1), 824(a)(3); RFAAX 1, at 4.

On February 1, 2022, pursuant to a prescriptive authority agreement, Registrant was granted prescriptive authority in Texas by Dr. R.K.Y. RFAAX 1, at 4. Dr. R.K.Y. died on March 5, 2023. *Id.* The prescriptive authority agreement, and therefore Registrant's prescriptive authority, terminated by operation of law upon the death of Dr. R.K.Y. *Id.* On April 20, 2023, Registrant was granted prescriptive authority by Dr. A.E.G. pursuant to a prescriptive authority agreement, which was terminated on June 9, 2023. *Id.*

Thus, Registrant lacked prescriptive authority in Texas from March 5, 2023, to April 20, 2023. *Id.* Nevertheless, between March 5, 2023, and April 20, 2023, Registrant issued six prescriptions for controlled substances. *Id.* Each controlled substance prescription listed Dr. R.K.Y. as Registrant's supervising physician, even though he was deceased when the prescription was issued. *Id.* Accordingly, the Agency finds unrebutted record evidence, and Registrant is deemed to have admitted, that she issued six prescriptions for controlled substances without possessing the requisite prescriptive authority in Texas.

B. Obtaining Controlled Substances by Fraud

Under Texas law, it is an offense to knowingly obtain and possess a controlled substance ''by misrepresentation, fraud, forgery, [or] deception.'' Tex. Health & Safety Code § 481.129(a)(5)(A).

On March 15, 2023, a prescription for alprazolam[6] was issued to individual D.R. in the name of Dr. R.K.Y., even though Dr. R.K.Y. died on March 5, 2023. RFAAX 1, at 4, 6. On the day the prescription was issued, Registrant used the prescription to personally obtain alprazolam by claiming that she was filling the prescription for individual D.R. *Id.* Registrant knew this claim was false because she knew that D.R. was incarcerated at the time. *Id.*

IV. Public Interest Determination

A. Legal Background

As discussed above, the OSC/ISO alleges that Registrant violated provisions of the CSA and its implementing regulations. As the Supreme Court stated in *Gonzales* v. *Raich,* 545 U.S. 1 (2005), ''the main objectives of the CSA were to conquer drug abuse and control the legitimate and illegitimate traffic in controlled substances.'' *Id.* at 12. *Gonzales* explained that:

> Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels. To effectuate these goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA . . . . The CSA and its implementing regulations set forth strict requirements regarding registration, labeling and packaging, production quotas, drug security, and recordkeeping.

Id. at 12–14.

Here, the OSC/ISO's allegations concern the CSA's ''strict requirements regarding registration'' and ''the need to prevent the diversion of drugs from legitimate to illicit channels.'' *Id.* Therefore, the allegations go to the heart of the CSA's ''closed regulatory system'' specifically designed ''to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances.'' *Id.* at 12–14.

When the CSA's requirements are not met, the Agency[7] ''may deny, suspend, or revoke [a] registration if . . . the [registrant's] registration would be 'inconsistent with the public interest.'" *Gonzales* v. *Oregon,* 546 U.S. 243, 251 (2006) (quoting 21 U.S.C. 824(a)(4)).[8] In the case of a ''practitioner,'' the Agency is directed to consider five factors in making the public interest determination. *Id.;* 21 U.S.C. 823(g)(1)(A)–(E).[9]

[3] The ALJ's numerous orders repeatedly reminded Registrant that failure to file a timely and compliant answer could result in a finding of default under DEA rules. *See* RFAA, at 2–3; RFAAX 4, at 2 (March 4, 2025 order); RFAAX 6, at n.3 (March 10, 2025 order); RFAAX 8, at 2 n.2 (April 21, 2025 order); RFAAX 10, at 2 n.4 (April 25, 2025 order). In addition, the OSC/ISO itself notified Registrant that if she ''fail[ed] to file . . . [an] answer, [she] shall be deemed to have waived [her] right to a hearing and to be in default.'' RFAAX 1, at 7 (citing 21 CFR 1301.43(c)(1)).

[4] According to the Controlled Substances Act (CSA), ''[f]indings of fact by the [DEA Administrator], if supported by substantial evidence, shall be conclusive.'' 21 U.S.C. 877. Here, where Registrant is found to be in default, all the factual allegations in the OSC/ISO are deemed to be admitted. These uncontested and deemed admitted facts constitute evidence that exceeds the ''substantial evidence'' standard of 21 U.S.C. 877; it is unrebutted evidence.

[5] This version of 22 Texas Administrative Code § 193.7(a) was in effect during all periods relevant to the OSC/ISO allegations.

[6] Alprazolam is a schedule IV depressant. 21 CFR 1308.14(c)(2).

[7] The CSA delegates power to the Attorney General, who has delegated authority to the Administrator of DEA (the Agency). 28 CFR 0.100.

[8] The Government has the burden of proof in this proceeding. 21 CFR 1301.44(e).

[9] The five factors are:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

Continued

The five factors are considered in the disjunctive. *Gonzales* v. *Oregon,* 546 U.S. at 292–93 (Scalia, J., dissenting) (''It is well established that these factors are to be considered in the disjunctive'' (quoting *In re Arora,* 60 FR 4447, 4448 (1995))); *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *David H. Gillis, M.D.,* 58 FR 37507, 37508 (1993). Any one factor, or combination of factors, may be decisive, *Gillis,* 58 FR at 37508, and the Agency ''may give each factor the weight . . . deem[ed] appropriate in determining whether a registration should be revoked or an application for registration denied.'' *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 185 n.2 (D.C. Cir. 2005) (Henderson, J., concurring) (quoting *Robert A. Smith, M.D.,* 70 FR 33207, 33208 (2007)); *see also Penick Corp.* v. *Drug Enf't Admin.,* 491 F.3d 483, 490 (D.C. Cir. 2007).

Moreover, while the Agency is required to consider each of the factors, it ''need not make explicit findings as to each one.'' *MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808, 816 (10th Cir. 2011) (quoting *Volkman* v. *U.S. Drug Enf't Admin.,* 567 F.3d 215, 222 (6th Cir. 2009)); *Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018); *Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 482 (6th Cir. 2005). ''In short, . . . the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct.'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009). Accordingly, as the Eleventh Circuit has recognized, Agency decisions have explained that findings under a single factor can support the revocation of a registration. *Jones Total Health Care Pharmacy,* 881 F.3d at 830.

B. Registrant's Registration Is Inconsistent With the Public Interest

While the Agency has considered all the public interest factors of 21 U.S.C. 823(g)(1),[10] the Government's evidence in support of its *prima facie* case is confined to Factors B and D. RFAA, at 4; RFAAX 1, at 7. Evidence is considered under Factors B and D when it reflects experience dispensing controlled substances and compliance or non-compliance with laws related to controlled substances. *Kareem Hubbard, M.D.,* 87 FR 21156, 21162 (2022).

Here, the Agency finds unrebutted record evidence, and Registrant is deemed to have admitted, that between March 5, 2023, and April 10, 2023, Registrant issued six prescriptions for controlled substances without a prescriptive authority agreement outside the usual course of professional practice and in violation of federal and Texas law. 21 CFR 1306.04; 22 Tex. Admin. Code §§ 222.4(a)(1)(A), 222.5(a); *see also Stephen McCarthy, P.A.,* 89 FR 71427, 71430 (2024) (''Respondent repeatedly issued controlled substance prescriptions outside the usual course of professional practice by issuing such prescriptions while lacking an active agreement with a supervisory physician as required by state law.''); *Richard J. Settles, D.O.,* 81 FR 64940, 64947 (2016) (finding registrant ''violated the CSA and DEA regulations'' when he issued controlled substance prescriptions without ''the requisite state authority to dispense controlled substances''). Such non-compliance with laws related to controlled substances reflects on Registrant's experience handling controlled substances. 21 U.S.C. 823(g)(1)(B), (D).

Furthermore, the Agency finds unrebutted record evidence, and Registrant is deemed to have admitted, that on March 15, 2023, Registrant used a prescription issued to another individual to obtain a controlled substance for herself by fraudulently claiming that she was filling the prescription for someone else, in violation of Texas law. Tex. Health & Safety Code § 481.129(a)(5)(A). Such non-compliance with laws related to controlled substances reflects on Registrant's experience handling controlled substances. 21 U.S.C. 823(g)(1)(B), (D).

After considering the factors of 21 U.S.C. 823(g)(1), the Agency finds that the Government satisfied its *prima facie* burden of showing that Registrant's registration would be ''inconsistent with the public interest.'' [11] 21 U.S.C. 824(a)(4). The Agency also finds that there is no mitigating evidence to rebut the Government's *prima facie* case, and therefore, finds that Registrant's registration is ''inconsistent with the public interest.'' *Id.* Thus, the only remaining issue is whether, in light of the Agency's finding that Registrant violated the law, Registrant can be trusted with a DEA registration.

V. Sanction

Where, as here, the Government has presented a *prima facie* case showing that a registrant's registration is inconsistent with the public interest, the burden shifts to Registrant to show why she can be trusted with a registration. *Morall,* 412 F.3d at 181; *Jones Total Health Care Pharmacy,* 881 F.3d at 830; *Garrett Howard Smith, M.D.,* 83 FR 18882, 18904 (2018). The issue of trust is a fact-dependent determination based on the circumstances presented by the individual practitioner. *Jeffrey Stein, M.D.,* 84 FR 46968, 46972 (2019); *see also Jones Total Health Care Pharmacy,* 881 F.3d at 833. Historically, the Agency has considered acceptance of responsibility, egregiousness, and deterrence when making this assessment.

Specifically, the Agency requires the practitioner to accept responsibility for his or her violation. *Jones Total Health Care Pharmacy,* 881 F.3d at 833; *ALRA Labs, Inc.* v. *Drug Enf't Admin.,* 54 F.3d 450, 452 (7th Cir. 1995). Acceptance of responsibility must be unequivocal. *Janet S. Pettyjohn, D.O.,* 89 FR 82639, 82641 (2024); *Mohammed Asgar, M.D.,* 83 FR 29569, 29573 (2018); *see also Jones Total Health Care Pharmacy,* 881 F.3d at 830–31. In addition, the Agency considers the egregiousness and extent of the misconduct in determining the appropriate sanction. *Jones Total Health Care Pharmacy,* 881 F.3d at 834 & n.4. The Agency also considers the need to

(B) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(C) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(g)(1)(A)–(E).

[10] As to Factor A, there is no record evidence of disciplinary action against Registrant's state medical license. 21 U.S.C. 823(g)(1)(A). However, ''[t]he fact that the record contains no evidence of a recommendation by a state licensing board does not weigh for or against a determination as to whether continuation of [Registrant's] DEA certification is consistent with the public interest.'' *Roni Dreszer, M.D.,* 76 FR 19434, 19444 (2011). As to Factor C, there is no evidence in the record that Registrant has been convicted of any federal or state law offense ''relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(g)(1)(C). However, as Agency cases have noted, ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Dewey C. Mackay, M.D.,* 75 FR 49956, 49973 (2010). As to Factor E, the Government's evidence fits squarely within the parameters of Factors B and D and does not raise ''other conduct which may threaten the public health and safety.'' 21 U.S.C. 823(g)(1)(E). Accordingly, Factor E does not weigh for or against Registrant.

[11] Given the violations of law proven by unrebutted record evidence as discussed herein, the Agency need not reach the remaining allegations related to the inadequacy of Registrant's medical records and the issuance of controlled substance prescriptions outside the usual course of professional practice. RFAAX 1, at 4–6. Registrant's prescribing controlled substances without authority and obtaining a controlled substance by fraud are sufficient to revoke.

deter similar acts by Registrant, the registrant community, and by future applicants for registration. *Stein,* 84 FR at 46972–73.

Here, Registrant did not timely or properly answer the allegations, and was therefore deemed to be in default. 21 CFR 1301.43(c), (e), (f); RFAA, at 1–4. To date, Registrant has not filed a motion with the Office of the Administrator to excuse the default. 21 CFR 1301.43(c)(1). Registrant has thus failed to timely or properly answer the allegations contained in the OSC/ISO and has not otherwise availed herself of the opportunity to refute the Government's case. As such, Registrant has not accepted responsibility for the proven violations, has made no representations regarding her future compliance with the CSA, and has not made any demonstration that she can be trusted with a registration.[12]

Further, the interests of specific and general deterrence weigh in favor of revocation. Registrant's misconduct in this matter concerns the CSA's ''strict requirements regarding registration'' and ''the need to prevent the diversion of drugs from legitimate to illicit channels,'' and, therefore, goes to the heart of the CSA's ''closed regulatory system'' specifically designed ''to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances.'' *Gonzales* v. *Raich,* 545 U.S. at 12–14. Registrant's egregious misconduct involved issuing controlled substance prescriptions without state authority to so do and obtaining a controlled substance by fraud. *Supra* Section IV.B. If the Agency were to allow Registrant to keep her registration under these circumstances, it would send a dangerous message that compliance with the law and preventing diversion are not essential to maintaining a registration.

In sum, Registrant has not offered any evidence on the record that rebuts the Government's case for revocation of her registration, and Registrant has not demonstrated that she can be entrusted with the responsibility of a registration. Accordingly, the Agency will order the revocation of Registrant's registration.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1) and 21 U.S.C. 824(a)(4), I hereby revoke DEA Certificate of Registration No. MA5242792 issued to Tracy Amerson-Rivers, A.P.R.N. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1) and 21 U.S.C. 824(a)(4), I hereby deny any pending applications of Tracy Amerson-Rivers, A.P.R.N., to renew or modify this registration, as well as any other pending application of Tracy Amerson-Rivers, A.P.R.N., for additional registration in Texas. This Order is effective December 1, 2025.

Signing Authority

This document of the Drug Enforcement Administration was signed on October 9, 2025, by Administrator Terrance Cole. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2025–19709 Filed 10–29–25; 8:45 am]

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[12] Even if the Agency were to consider Registrant's purported answers, which were deemed noncompliant by the ALJ, the Agency would still find that Registrant has failed to accept responsibility. In this regard, in her April 21 and April 24 purported answers, Registrant characterized the OSC/ISO factual allegations as the result of ''administrative oversight,'' and not ''diversion'' or ''abuse of prescribing authority.'' Registrant's inability or unwillingness to accept that the proven violations constitute diversion of controlled substances undermines any attempt on her part to accept responsibility for the misconduct. *See Gonzales* v. *Raich,* 545 U.S. at 12–14 (''Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels.''); *Phong H. Tran, M.D.,* 90 FR 14383, 14385 (2025) (''Respondent's attempts to minimize this egregious misconduct undermine any purported acceptance of responsibility.'').

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Antony Vanbang, M.D.; Decision and Order

On June 9, 2025, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Antony Vanbang, M.D., of Denver, Colorado (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1 at 1, 4. The OSC proposed the revocation of Registrant's Certificate of Registration, No. FV5019460, alleging that Registrant's registration should be revoked because Registrant is currently ''without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of Colorado, the state in which [he is] registered with DEA.'' *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The OSC notified Registrant of his right to file a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id.* at 2–3 (citing 21 CFR 1301.43). Here, Registrant did not request a hearing, and the Agency finds him to be in default. RFAA, at 2.[1] ''A default, unless excused, shall be deemed to constitute a waiver of the registrant's/applicant's right to a hearing and an admission of the factual allegations of the [OSC].'' 21 CFR 1301.43(e).

Further, ''[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] 1316.67.'' *Id.* 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant's default pursuant to 21 CFR 1301.43(c), (f), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are deemed admitted. According to the OSC, on April 16, 2025, the Colorado Medical Board suspended Registrant's license to practice medicine in the State of Colorado. RFAAX 1, at 2. According to Colorado online records, of which the Agency takes official notice,[2] Registrant's Colorado medical license remains suspended. Colorado Division of Professions and Occupations, *https://apps2.colorado.gov/dora/licensing/lookup/licenselookup.aspx* (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice

[1] Based on the Government's submissions in its RFAA dated August 11, 2025, the Agency finds that service of the OSC on Registrant was adequate. Specifically, the Government's included Declaration from a DEA Special Agent indicates that on June 23, 2025, Registrant was personally served with a copy of the OSC at his residence. RFAAX 2, at 2.

[2] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979).

medicine in Colorado, the state in which he is registered with DEA.[3]

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.''

With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *Gonzales* v. *Oregon,* 546 U.S. 243, 270 (2006) (''The Attorney General can register a physician to dispense controlled substances 'if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.' . . . The very definition of a 'practitioner' eligible to prescribe includes physicians 'licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices' to dispense controlled substances. 802(21).''). The Agency has applied these principles consistently. *See, e.g., James L. Hooper, M.D.,* 76 FR 71371, 71372 (2011), *pet. for rev. denied,* 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.,* 43 FR 27616, 27617 (1978).[4]

According to Colorado statute, ''dispense'' means ''to deliver a controlled substance to an ultimate user, patient, or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.'' Colo. Rev. Stat. 18–18–102(9) (2025). Further, a ''practitioner'' means a ''physician . . . or other person licensed, registered, or otherwise permitted, by this state, to distribute, dispense, conduct research with respect to, administer, or to use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.'' *Id.* 18–18–102(29).

Here, the undisputed evidence in the record is that Registrant lacks authority to practice medicine in Colorado. As discussed above, a physician must be a licensed practitioner to dispense a controlled substance in Colorado. Thus, because Registrant lacks authority to practice medicine in Colorado and, therefore, is not authorized to handle controlled substances in Colorado, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant's DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. FV5019460 issued to Antony Vanbang, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Antony Vanbang, M.D., to renew or modify this registration, as well as any other pending application of Antony Vanbang, M.D., for additional registration in Colorado. This Order is effective December 1, 2025.

Signing Authority

This document of the Drug Enforcement Administration was signed on October 17, 2025, by Administrator Terrance Cole. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2025–19710 Filed 10–29–25; 8:45 am]

BILLING CODE 4410–09–P

[3] Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' The material fact here is that Registrant, as of the date of this decision, is not licensed to practice medicine in Colorado. Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to the DEA Office of the Administrator, Drug Enforcement Administration at *dea.addo.attorneys@dea.gov.*

[4] This rule derives from the text of two provisions of the Controlled Substances Act (CSA). First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper, M.D.,* 76 FR at 71371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51104, 51105 (1993); *Bobby Watts, M.D.,* 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton, M.D.,* 43 FR at 27617.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Dawn Evert, N.P.; Decision and Order

On February 25, 2025, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) to Dawn Evert, N.P., of Pueblo, Colorado (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1. The OSC/ISO informed Registrant of the immediate suspension of her DEA Certificate of Registration, No. ME1730870, pursuant to 21 U.S.C. 824(d), alleging that Registrant's continued registration is ''an imminent danger to the public health or safety.'' *Id.* (quoting 21 U.S.C. 824(d)). The OSC/ISO also proposed the revocation of Registrant's registration, alleging that her registration is inconsistent with the public interest. *Id.* (citing 21 U.S.C. 823(g)(1)(B) and (D), 824(a)(4)).

More specifically, the OSC/ISO alleged that Registrant unlawfully prescribed controlled substances to four patients, which included prescribing dangerous combinations of controlled substances, failing to establish a medical justification for the prescribing of controlled substances, and failing to sufficiently monitor patients receiving controlled substance prescriptions. *Id.* at 1–2. The OSC/ISO alleged that the issuance of these prescriptions violated both state and federal law. *Id.* at 3. (citing 21 U.S.C. 823(g)(1)(D)).[1]

On April 29, 2025, the Government submitted an RFAA requesting that the Agency issue a default final order revoking Registrant's registration.

[1] According to the OSC/ISO and Agency records, Registrant's registration expired on August 31, 2025. RFAAX 1, at 3. The fact that a registrant allows her registration to expire during the pendency of an administrative enforcement proceeding does not impact the Agency's jurisdiction or prerogative under the Controlled Substances Act to adjudicate the OSC/ISO to finality. *Jeffrey D. Olsen, M.D.,* 84 FR 68474, 68476–79 (2019).

RFAA, at 3.[2] After carefully reviewing the entire record and conducting the analysis as set forth in more detail below, the Agency grants the Government's request for final agency action and revokes Registrant's registration.

I. Default Determination

Under 21 CFR 1301.43, a registrant entitled to a hearing who fails to file a timely hearing request ''within 30 days after the date of receipt of the [OSC] . . . shall be deemed to have waived their right to a hearing and to be in default'' unless ''good cause'' is established for the failure. 21 CFR 1301.43(a) & (c)(1). In the absence of a demonstration of good cause, a registrant who fails to timely file an answer also is ''deemed to have waived their right to a hearing and to be in default.'' 21 CFR 1301.43(c)(2). Unless excused, a default is deemed to constitute ''an admission of the factual allegations of the [OSC].'' 21 CFR 1301.43(e).

Here, the OSC/ISO notified Registrant of her right to file a written request for hearing, and that if she failed to file such a request, she would be deemed to have waived her right to a hearing and be in default. RFAAX 1, at 10 (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 1–2.[3] Thus, the Agency finds that Registrant is in default and therefore is deemed to have admitted to the factual allegations in the OSC/ISO. 21 CFR 1301.43(e).

II. Applicable Law

As the Supreme Court stated in *Gonzales* v. *Raich,* 545 U.S. 1 (2005), ''the main objectives of the [Controlled Substances Act (CSA)] were to conquer drug abuse and control the legitimate and illegitimate traffic in controlled substances.'' 545 U.S. at 12. *Gonzales* explained that:

> Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels. To effectuate these goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA. . . . The CSA and its implementing regulations set forth strict requirements regarding registration, labeling and packaging, production quotas, drug security, and recordkeeping.

Id. at 12–14.

According to the CSA's implementing regulations, prescriptions may only be issued by an individual practitioner who is ''[a]uthorized to prescribe controlled substances by the jurisdiction in which he is licensed to practice his profession'' and has either been issued a DEA registration or is exempted from registration under DEA regulations. 21 CFR 1306.03. Furthermore, a lawful controlled substance order or prescription is one that is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). A ''practitioner must establish and maintain a *bona fide* doctor-patient relationship in order to act 'in the usual course of . . . professional practice' and to issue a prescription for a 'legitimate medical purpose.' '' *Dewey C. MacKay, M.D.,* 75 FR 49956, 49973 (2010).

Colorado state law similarly requires that prescriptions for controlled substances only be issued in the course of legitimate professional practice. Colo. Rev. Stat. 12–255–120(1)(s); RFAAX 1, at 3. Colorado law also forbids ''[A]ny action by any person who . . . [h]as acted in a manner inconsistent with the health or safety of persons under his or her care.'' *Id.* 12–255–120(1)(c); RFAAX 1, at 2. In addition, Colorado law requires a practitioner or the practitioner's designee in ordinary circumstances to query the database the Colorado State Board of Pharmacy maintains of prescription drugs (Prescription Drug Monitoring Program or ''Colorado PDMP'') before prescribing an opioid or benzodiazepine to a patient. *Id.* 12–280–404(4)(a), (a.5) (requirement to query the Colorado PDMP before prescribing an opioid or benzodiazepine); RFAAX 1, at 3.

III. Findings of Fact

In light of Registrant's default, the factual allegations in the OSC/ISO are deemed admitted.[4] 21 CFR 1301.43(e). Accordingly, Registrant admits to each of the following facts. Specifically, Registrant admits that between January 2023 and November 2024, she issued numerous prescriptions for Schedule II and IV controlled substances to four patients, including a law enforcement officer operating in an undercover capacity (UC). RFAAX 1, at 3. Registrant admits that these prescriptions were not for a legitimate medical purpose, nor were they issued in the usual course of professional practice. *Id.*

1. Prescribing to UC

On September 18, 2023, UC visited Registrant's office and the visit was audio recorded. RFAAX 1, at 4. Registrant admits that she did not perform a sufficient initial evaluation and examination, including the taking of a comprehensive history of UC's past substance use history. *Id.* Registrant also admits that she failed to appropriately address the red flags of abuse and diversion exhibited by UC during the September 18, 2023 appointment. *Id.* For example, UC stated to Registrant that they had previously obtained ''some blues'' [5] from an acquaintance. *Id.*

On October 5, 2023, UC visited Registrant's office again and Registrant prescribed UC oxycodone 10 mg (21 tablets). *Id.* Registrant admits that she prescribed UC this controlled substance without maintaining sufficient clinical documentation, without conducting an appropriate medical examination and evaluation, without establishing a legitimate diagnosis, and without performing necessary and consistent monitoring. *Id.* Registrant failed to establish a proper medical justification for the treatment of UC with oxycodone and failed to assess UC's risk factors for adverse outcomes. *Id.* Registrant admits that she failed to appropriately address the red flags of abuse and diversion exhibited by UC during this visit. *Id.* at 5. Specifically, UC stated to Registrant that they had obtained ''blues'' from a friend. *Id.* Registrant admits that she falsified UC's patient record associated with this visit by documenting performance of a test that she, in fact, did not conduct. *Id.* Registrant further admits that she did not review the Colorado PDMP prior to issuing UC the prescription for oxycodone. *Id.*

On October 18, 2023, UC called Registrant's office and spoke with an unidentified individual who answered the line. *Id.* at 5. UC asked the

[2] The RFAA states that ''the Administrator is authorized to render the Agency's final order, without . . . making any finding of fact in this matter.'' RFAA, at 3 (citing 21 CFR 1301.43(c), (f), and 1301.46). However, 21 CFR 1316.67 requires that the Administrator's final order ''set forth the final rule and findings of fact and conclusions of law upon which the rule is based.'' *See JYA LLC d/b/a Webb's Square Pharmacy,* 90 FR 31244, 31246 n.7 (2025).

[3] Based on the Government's submissions in its RFAA, the Agency finds that service of the OSC/ISO on Registrant was adequate. Specifically, the Government attached evidence that Registrant was personally served with the OSC/ISO on February 26, 2025, and signed a Form DEA–12 confirming receipt of the OSC/ISO. RFAAX 2, at 1.

[4] According to the Controlled Substances Act (CSA), ''[f]indings of fact by the [DEA Administrator], if supported by substantial evidence, shall be conclusive.'' 21 U.S.C. 877. Here, where Applicant is found to be in default, all the factual allegations in the OSC are deemed to be admitted. These uncontested and deemed admitted facts constitute evidence that exceeds the ''substantial evidence'' standard of 21 U.S.C. 877; it is unrebutted evidence.

[5] ''Blues'' is a street term for pills containing oxycodone (a Schedule II opioid). RFAAX 1, at 4.

unidentified individual who answered the telephone to ask ''Evert'' for another prescription of oxycodone. *Id.* On the same day, Registrant issued a second prescription to UC for oxycodone 10 mg (21 tablets). *Id.* Registrant admits that she prescribed UC this controlled substance without maintaining sufficient clinical documentation, without conducting an appropriate medical examination and evaluation, without establishing a legitimate diagnosis, and without performing necessary and consistent monitoring. *Id.* Registrant failed to establish a proper medical justification for the treatment of UC with oxycodone and failed to assess UC's risk factors for adverse outcomes. *Id.* Registrant admits that she did not review the Colorado PDMP prior to issuing UC the prescription for oxycodone. *Id.*

On November 6, 2023, UC called Registrant's office and spoke with an unidentified individual who answered the phone. *Id.* UC asked the person who answered the phone for a refill of their prescription from ''Evert'' for oxycodone. *Id.* On that same day, Registrant issued a third prescription to UC for oxycodone 10 mg (28 tablets). *Id.* Registrant admits that she prescribed UC this controlled substance without maintaining sufficient clinical documentation, without conducting an appropriate medical examination and evaluation, without establishing a legitimate diagnosis, and without performing necessary and consistent monitoring. *Id.* at 6. Registrant failed to establish a proper medical justification for the treatment of UC with oxycodone and failed to assess UC's risk factors for adverse outcomes. *Id.* Registrant admits that she did not review the Colorado PDMP prior to issuing UC the prescription for oxycodone. *Id.*

2. Prescribing to J.S.

Registrant admits that between January 2023 and November 2024, Registrant issued numerous prescriptions for controlled substances to individual J.S., including hydrocodone 5 mg and hydrocodone 10 mg (a Schedule II opioid), as well as diazepam 5 mg and diazepam 10 mg (a Schedule IV benzodiazepine). *Id.* Registrant also admits that she prescribed these controlled substances without sufficient clinical documentation, without conducting an appropriate medical examination and evaluation, without establishing a legitimate diagnosis, and without performing necessary and consistent monitoring. *Id.* Registrant further admits that she failed to monitor and review Colorado PDMP information when prescribing these opioids and benzodiazepines between January 1, 2023, and November 30, 2024. *Id.* at 7. Registrant admits and the Agency finds unrebutted evidence that these controlled substance prescriptions were not issued for a legitimate medical purpose, nor in the usual course of professional practice. *Id.*

3. Prescribing to R.N.

Registrant admits that between January 2023 and September 2024, Registrant issued numerous prescriptions for controlled substances to individual R.N., including the following Schedule II opioids: oxycodone 20 mg, oxycodone 30 mg, morphine sulfate 60 mg (a Schedule II opioid), and morphine sulfate 100 mg. *Id.* Registrant also prescribed diazepam 5 mg and diazepam 10 mg. *Id.* Registrant admits that she prescribed these controlled substances without sufficient clinical documentation, without conducting an appropriate medical examination and evaluation, without establishing a legitimate diagnosis, and without performing necessary and consistent monitoring. *Id.* Registrant further admits that she failed to review Colorado PDMP information when prescribing these opioids and benzodiazepines between January 1, 2023, and November 30, 2024. *Id.* at 8. Registrant admits and the Agency finds unrebutted evidence that these controlled substance prescriptions described above were not issued for a legitimate medical purpose, nor in the usual course of professional practice. *Id.*

4. Prescribing to M.J.

Registrant admits that between February 2023 and September 2024, Registrant issued prescriptions for controlled substances to individual M.J. on approximately a monthly basis. *Id.* These prescriptions included one and, at times, two of the following opioids per month: oxycodone 5 mg, oxycodone 10 mg, oxycodone 30 mg, morphine sulfate 15 mg, and morphine sulfate 30 mg. *Id.* Registrant also prescribed approximately monthly prescriptions for diazepam 10 mg. *Id.* Registrant admits that she prescribed these controlled substances without sufficient clinical documentation, without conducting an appropriate medical examination and evaluation, without establishing a legitimate diagnosis, and without performing necessary and consistent monitoring. *Id.* Registrant further admits that she failed to review Colorado PDMP information when prescribing these opioids and benzodiazepines. *Id.* at 9. Registrant admits and the Agency finds unrebutted evidence that these controlled substance prescriptions described above were not issued for a legitimate medical purpose, nor in the usual course of professional practice. *Id.*

5. Expert Review

DEA retained an independent medical expert to review materials, including Registrant's medical records for UC and individuals J.S., R.N., and M.J. *Id.* at 9. Based on Registrant's deviations from the standard of care, the medical expert concluded, and the Agency finds, that the prescriptions for controlled substances Registrant issued violated minimal medical standards applicable to the practice of medicine in Colorado. *Id.*

Accordingly, the Agency finds unrebutted record evidence that Registrant prescribed controlled substances, including dangerous combinations of controlled substances, to UC and three other individuals, without conducting an appropriate medical examination, establishing a medical justification for the prescribing of controlled substances, and querying the PDMP to monitor patients receiving controlled substance prescriptions. *Id.* at 1–2.

IV. Public Interest Determination

A. Legal Background on Public Interest Determinations

When the CSA's requirements are not met, the Attorney General ''may deny, suspend, or revoke [a] registration if . . . the [registrant's] registration would be 'inconsistent with the public interest.' '' *Gonzales* v. *Oregon,* 546 U.S. 243, 251 (2006) (quoting 21 U.S.C. 824(a)(4)). In the case of a ''practitioner,'' Congress directed the Attorney General to consider five factors in making the public interest determination. *Id.;* 21 U.S.C. 823(g)(1)(A–E).[6]

The five factors are considered in the disjunctive. *Gonzales* v. *Oregon,* 546 U.S. at 292–93 (Scalia, J., dissenting) (''It is well established that these factors are to be considered in the disjunctive'' (quoting *In re Arora,* 60 FR 4447, 4448 (1995))); *Robert A. Leslie, M.D.,* 68 FR

[6] The five factors are:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The [registrant's] experience in dispensing or conducting research with respect to controlled substances.

(C) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety.

15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *David H. Gillis, M.D.,* 58 FR 37507, 37508 (1993). Any one factor, or combination of factors, may be decisive, *David H. Gillis, M.D.,* 58 FR at 37508, and the Agency ''may give each factor the weight . . . deem[ed] appropriate in determining whether a registration should be revoked or an application for registration denied.'' *Morall,* 412 F.3d. at 185 n.2 (Henderson, J., concurring) (quoting *Robert A. Smith, M.D.,* 70 FR 33207, 33208 (2007)); *see also Penick Corp.* v. *Drug Enf't Admin.,* 491 F.3d 483, 490 (D.C. Cir. 2007).

Moreover, while the Agency is required to consider each of the factors, it ''need not make explicit findings as to each one.'' *MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808, 816 (10th Cir. 2011) (quoting *Volkman* v. *U.S. Drug Enf't Admin.,* 567 F.3d 215, 222 (6th Cir. 2009)); *Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018); *Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 482 (6th Cir. 2005). ''In short, . . . the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct.'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, Agency decisions have explained that findings under a single factor can support the revocation of a registration. *MacKay,* 664 F.3d at 821.

The Government has the burden of proof in this proceeding. 21 CFR 1301.44(e) (revoking or suspending a registration).

B. Registrant's Registration Is Inconsistent With the Public Interest

While the Agency has considered all the public interest factors of 21 U.S.C. 823(g)(1),[7] the Government's evidence in support of its *prima facie* case is confined to Factors B and D. RFAAX 1, at 3. Evidence is considered under Factors B and D when it reflects compliance or non-compliance with laws related to controlled substances and experience dispensing controlled substances. *Kareem Hubbard, M.D.,* 87 FR 21156, 21162 (2022).

Here, Registrant's noncompliance with state and federal law reflects his experience prescribing with respect to controlled substances. *See supra* Section III. Moreover, the Agency finds unrebutted record evidence that between January 2023 and November 2024 Registrant unlawfully prescribed controlled substances, including dangerous combinations of controlled substances, to UC and three other individuals, without conducting an appropriate medical examination, establishing a medical justification for the prescribing of controlled substances, and querying the PDMP to monitor patients receiving controlled substance prescriptions. Further, an independent medical expert reviewed Registrant's medical records and controlled substance prescriptions and found that Registrant's prescribing violated minimal medical standards in Colorado. Accordingly, the unrebutted record evidence supports the Agency's finding that between January 2023 and November 2024 Registrant committed violations of both Colorado state law and federal controlled substance regulations, namely 21 CFR 1306.04(a), Colo. Rev. Stat. 12–280–404(4)(a) & (a.5), and Colo. Rev. Stat. 12–255–120(1)(c) & (s).

The Agency further finds that after considering the factors of 21 U.S.C. 823(g)(1), Registrant's registration is ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). Accordingly, the Government satisfied its *prima facie* burden of showing that Registrant's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). The Agency also finds that there is no mitigating evidence to rebut the Government's *prima facie* case. Thus, the only remaining issue is whether, in spite of the public interest determination, Registrant can be trusted with a registration.

V. Sanction

Where, as here, the Government has met the burden of showing that Registrant's continued registration is inconsistent with the public interest, the burden shifts to Registrant to show why she can be entrusted with a registration. *Morall,* 412 F.3d. at 174; *Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018); *Garrett Howard Smith, M.D.,* 83 FR 18882, 18904 (2018). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent. *Jeffrey Stein, M.D.,* 84 FR 46968, 46972 (2019); *see also Jones Total Health Care Pharmacy,* 881 F.3d at 833. Moreover, as past performance is the best predictor of future performance, the Agency requires that a registrant who has committed acts inconsistent with the public interest accept responsibility for those acts and demonstrate that she will not engage in future misconduct. *See Jones Total Health Care Pharmacy,* 881 F.3d at 833; *ALRA Labs, Inc.* v. *Drug Enf't Admin.,* 54 F.3d 450, 452 (7th Cir. 1995). The Agency requires a registrant's unequivocal acceptance of responsibility. *Janet S. Pettyjohn, D.O.,* 89 FR 82639, 82641 (2024); *Mohammed Asgar, M.D.,* 83 FR 29569, 29573 (2018); *see also Jones Total Health Care Pharmacy,* 881 F.3d at 830–31. In addition, a registrant's candor during the investigation and hearing is an important factor in determining acceptance of responsibility and the appropriate sanction. *See Jones Total Health Care Pharmacy,* 881 F.3d at 830–31; *Hoxie,* 419 F.3d at 483–84. Further, the Agency considers the egregiousness and extent of the misconduct as significant factors in determining the appropriate sanction. *See Jones Total Health Care Pharmacy,* 881 F.3d at 834 & n.4. The Agency also considers the need to deter similar acts by a registrant and by the community of registrants. *Jeffrey Stein, M.D.,* 84 FR at 46972–73.

Here, Registrant failed to answer the allegations contained in the OSC\ISO and did not otherwise avail herself of the opportunity to refute the Government's case. Thus, there is no record evidence that Registrant takes responsibility, let alone unequivocal responsibility, for the misconduct. Accordingly, she has not convinced the Agency that her future controlled-substance-related actions will comply with the CSA such that she can be entrusted with the responsibilities of a registration.

Further, the interests of specific and general deterrence weigh in favor of

[7] As to Factor A, there is no record evidence of disciplinary action against Registrant's state medical license. 21 U.S.C. 823(g)(1)(A). State authority to practice medicine is ''a necessary, but not a sufficient condition for registration.'' *Robert A. Leslie, M.D.,* 68 FR at 15230. Therefore, ''[t]he fact that the record contains no evidence of a recommendation by a state licensing board does not weigh for or against a determination as to whether continuation of the Respondent's DEA certification is consistent with the public interest.'' *Roni Dreszer, M.D.,* 76 FR 19434, 19444 (2011). As to Factor C, there is no evidence in the record that Registrant has been convicted of any federal or state law offense ''relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(g)(1)(C). However, as Agency cases have noted, ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Dewey C. MacKay, M.D.,* 75 FR at 49973. As to Factor E, the Government's evidence fits squarely within the parameters of Factors B and D and does not raise ''other conduct which may threaten the public health and safety.'' 21 U.S.C. 823(g)(1)(E). Accordingly, Factor E does not weigh for or against Registrant.

revocation. Registrant's conduct in this matter concerns the CSA's strict requirements regarding registration and recordkeeping and, therefore, goes to the heart of the CSA's ''closed regulatory system'' specifically designed ''to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances.'' *Gonzales* v. *Raich,* 545 U.S. at 12–14. Permitting Registrant to maintain a registration under these circumstances would send a dangerous message that compliance with the law is not essential to maintaining a registration.

In sum, Registrant has not offered any credible evidence on the record that rebuts the Government's case for revocation of her registration, and Registrant has not demonstrated that she can be entrusted with the responsibility of registration. Accordingly, the Agency will order the revocation of Registrant's registration.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(g)(1), I hereby revoke DEA Certificate of Registration No. ME1730870 issued to Dawn Evert, N.P. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Dawn Evert, N.P., to renew or modify this registration, as well as any other pending application of Dawn Evert, N.P., for registration in Colorado. This Order is effective December 1, 2025.

Signing Authority

This document of the Drug Enforcement Administration was signed on October 9, 2025, by Administrator Terrance Cole. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2025–19707 Filed 10–29–25; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Pharmacy Place, Llc; Decision and Order

I. Introduction

On November 17, 2021, the United States Department of Justice, Drug Enforcement Administration (Agency) issued an Order to Show Cause and Immediate Suspension of Registration (collectively, OSC/ISO) to Pharmacy Place, LLC, of Houston, Texas (Respondent).[1] OSC/ISO, at 1, 10–11. The OSC/ISO immediately suspended, and proposed the revocation of, Respondent's Drug Enforcement Administration (DEA or Government) certificate of registration, No. FP8885785 (registration), pursuant to 21 U.S.C. 824(d) and (a)(4), respectively, ''because . . . [Respondent's] continued registration constitutes 'an imminent danger to the public health or safety''' and ''because . . . [Respondent's] continued registration is inconsistent with the public interest, as that term is defined in 21 U.S.C. . . . [823(g)(1)].''[2] *Id.* at 1.

The OSC/ISO more specifically alleges that, according to an ''independent pharmacy expert retained by the DEA'' who ''reviewed patient profile data, Texas Prescription Monitoring Program data, and prescriptions reported as filled by Respondent,'' Respondent ''filled many controlled substance prescriptions outside the usual course of pharmacy practice'' and ''in contravention of . . . [its] 'corresponding responsibility' under 21 CFR 1306.04(a)'' from March 16, 2020, through August 19, 2021. *Id.* at 2. The OSC/ISO also alleges that Respondent violated recordkeeping requirements.[3]

A DEA Administrative Law Judge (ALJ) determined that Respondent filed a written statement, dated January 20, 2022 (Written Statement), in lieu of requesting a hearing and, accordingly, issued an Order Terminating the Proceedings on January 25, 2022.[4] 21 CFR 1316.49 (2022) (replaced by current rule in effect Nov. 2022).[5] The Government filed its RFAA on September 20, 2023.[6]

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[1] According to GX 3, Attachment B, DEA–82, Notice of Inspection of Controlled Premises, ''Rita Okafor'' is the Pharmacist-in-Charge (PIC) and Chief Executive Officer (CEO) of Respondent, and she signed the DEA–82. *See also* GX 3 (Declaration of First Houston Diversion Investigator (DI)), at 2–3, GX 4 (Declaration of Second Houston DI), at 1–2.

[2] Effective December 2, 2022, the Medical Marijuana and Cannabidiol Research Expansion Act, Public Law 117–215, 136 Stat. 2257 (2022) (Marijuana Research Amendments or MRA), amended the Controlled Substances Act (CSA) and other statutes. Relevant to this matter, the MRA redesignated 21 U.S.C. 823(f), cited in the OSC/ISO, as 21 U.S.C. 823(g)(1). Accordingly, this Decision cites to the current designation, 21 U.S.C. 823(g)(1), and to the MRA-amended CSA throughout.

[3] The OSC/ISO's recordkeeping violation allegations are:

a. Failure to provide complete and accurate records as required by 21 CFR 1304.21(a);

b. Failure to maintain dispensing records for controlled substances as required by 21 CFR 1304.22(c);

c. Failure to maintain records readily retrievable as required by 21 CFR 1304.04(f)(2);

d. Failure to separate DEA–222 order forms from all other records as required [by] 21 CFR 1305.17(c); and

e. Failure to affix to the package a label showing the date the prescription was filled, the pharmacy name and address, the serial number of the prescription, the name of the patient, the name of the prescribing practitioner, and directions for use and cautionary statements, if any, contained in such prescription or required by law as required by 21 CFR 1306.14(a).

OSC/ISO, at 10.

[4] Respondent's thirteen-page Written Statement is not included in the Request for Final Agency Action (RFAA), although the Agency accessed it and considered it during this adjudication. *Infra* section III. The Agency obtained the Written Statement from the Office of ALJs' file.

The ALJ's Order Terminating the Proceedings was served on two lawyers for Respondent. Order Terminating the Proceedings, at 3.

[5] The version of 21 CFR 1316.49 in effect during the relevant time period stated: ''Any person entitled to a hearing may, within the period permitted for filing a request for hearing or notice of appearance, [file a] waiver of an opportunity for a hearing, together with a written statement regarding his position on the matters of fact and law involved in such hearing. Such statement, if admissible, shall be made a part of the record and shall be considered in light of the lack of opportunity for cross-examination in determining the weight to be attached to matters of fact asserted therein.''

The Rule contemplated that a person who did not want to request a hearing could submit in writing his position on the ''matters of fact and law'' that would be involved in a hearing. An admissible written statement is made a part of the record and the weight attached to its asserted facts is to be determined in light of the lack of opportunity for cross-examination.

The Agency notes that the Written Statement is signed by Respondent's counsels, and that it does not attach any documentary evidence or declaration, let alone a declaration sworn to by a competent fact witness. In other words, the Written Statement is counsel argument untethered to evidence. As such, while the Written Statement provides the Agency with insight into Respondent's position concerning the OSC/ISO, it does not include any facts that the Agency may weigh against the evidence the Government submitted with its RFAA. *Infra* sections III, IV, and V.

[6] The Agency conducted a ''mootness'' analysis. The OSC/ISO was issued on November 17, 2021. The expiration date assigned to Respondent's registration is March 31, 2022. The RFAA is dated September 20, 2023. Respondent's Written Statement contests the OSC/ISO allegations and suggests that they are borne of a misperceived relationship between Respondent and Dr. Rita's Pharmacy and ''whatever shortcomings (if any) remained unaddressed in that matter.'' Respondent's Written Statement, at 12–13 (''Respondent consistently engaged in measures to resolve red flags, acted in the usual course of

Having thoroughly analyzed the record and applicable law, the Agency summarizes its findings and conclusions. First, the OSC/ISO includes specific and detailed factual allegations that Respondent violated Texas law and the CSA. *Infra* section III. Second, Respondent timely filed its Written Statement, and its Written Statement explicitly and implicitly acknowledges its receipt of the OSC/ISO. *Supra.* Third, Respondent's Written Statement, other than explicitly and unambiguously admitting the statement, not the allegation, portion of OSC/ISO paragraph 28 about ''shared addresses'' red flags, is ambiguous about whether Respondent admits unlawfully filling controlled substance prescriptions for individuals sharing the same address, does not respond directly or specifically to any of the OSC/ISO's factual allegations, does not include documentary evidence disproving, or even disputing, any of the OSC/ISO's factual allegations, and does not take responsibility, let alone unequivocal responsibility, for any violation alleged in the OSC/ISO. *Infra* sections III and V; *supra* n.5. Fourth, the RFAA presents a *prima facie* case of the OSC/ISO's general allegations, except for the third through fifth recordkeeping allegations. *Infra* section III. Fifth, the record includes substantial evidence, indeed unequivocal and uncontroverted evidence, that Respondent's controlled substance fills during the period covered by the OSC/ISO violated Texas law and, thus, its CSA corresponding responsibility, and that Respondent violated two recordkeeping rules. 21 CFR 1304.21(a), 1304.22(c); *infra* section III; *infra* n.11. Finally, the Agency concludes that Respondent's continued registration would be inconsistent with the public interest and that it did not unequivocally accept responsibility for its legal violations. 21 U.S.C. 824(a)(4); *infra* sections IV and V. Accordingly, the Agency will revoke Respondent's registration.

II. The CSA and Texas Pharmacists' Professional Responsibility

The main objectives of the CSA, according to the Supreme Court, are to ''conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances.'' *Gonzales* v. *Raich,* 545 U.S. 1, at 12 (2005). Given these objectives, the Supreme Court states, particular congressional concerns included ''the need to prevent the diversion of drugs from legitimate to illicit channels.'' *Id.* at 12–13. Further, according to the Supreme Court, to accomplish the CSA's objectives, ''Congress devised a closed regulatory system making it unlawful to . . . dispense[ ] or possess any controlled substance except in a manner authorized by'' the statute.[7] *Id.* at 13.

According to the CSA's implementing rules, a lawful controlled substance order or prescription is one that is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). As the Supreme Court explained in the context of the Act's requirement that Schedule II controlled substances may be dispensed only by written prescription, ''the prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse . . . [and] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006), *see also United States* v. *Hayes,* 595 F.2d 258 (5th Cir. 1979), *cert. denied,* 444 U.S. 866 (1979) (pharmacist's failed challenge to his federal corresponding responsibility).

While the ''responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, . . . a corresponding responsibility rests with the pharmacist who fills the prescription.'' 21 CFR 1306.04(a).

An order purporting to be a prescription issued not in the usual course of professional treatment . . . is not a prescription within the meaning and intent of section 309 of the Act (21 U.S.C. [§] 829) and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

Id. Accordingly, a pharmacy's registration authorizes it to ''dispense,'' or ''deliver a controlled substance to an ultimate user . . . by, or pursuant to the lawful order of, . . . a practitioner.'' 21 U.S.C. 802(10).

The OSC/ISO is addressed to Respondent at its registered address in Texas. Therefore, the Agency also evaluates Respondent's actions according to Texas law, including the applicable Texas pharmacist professional responsibilities. *Gonzales* v. *Oregon,* 546 U.S. at 269–71.

During the period alleged in the OSC/ISO, Texas law specifically addressed pharmacists' professional responsibilities. First, according to Texas law, ''[a] pharmacist may not dispense . . . a controlled substance . . . except under a valid prescription and in the course of professional practice).'' Tex. Health & Safety Code § 481.074(a) (2019). Second, pharmacists ''shall make every reasonable effort to ensure that any prescription drug order . . . has been issued for a legitimate medical purpose by a practitioner in the course of medical practice.'' 22 Tex. Admin. Code § 291.29(b) (2018). Further, according to Texas law, a ''pharmacist shall make every reasonable effort to prevent inappropriate dispensing due to fraudulent, forged, invalid, or medically inappropriate prescriptions in violation of a pharmacist's corresponding responsibility.'' *Id.* § 291.29(f). Texas specifically identifies ''red flag factors'' that are ''relevant to preventing the non-therapeutic dispensing of controlled substances'' that ''shall be considered by evaluating the totality of the

professional practice prior to dispensing, and continued to fill prescriptions under Respondent's thorough prescription verification and practice measures''), *id.* at 3 (''Disconcertedly, . . . [Respondent] received an email from the DEA Registration Authority (*@deaecom.gov*) purporting to indicate that Rita Okafor had requested revocation of all CSOS certificates asserting DEA Registration number:FP8885785 [sic]. Such a request was never made.''

The Agency notes that Respondent's Written Statement does not explicitly address Rita Okafor's relationship to itself. That relationship, according to the record before the Agency, is 60% owner (with her husband owning the remaining 40%), CEO, and PIC. GX 3, at 2–3, GX 4, at 1–2; *supra* n.1. Further, Respondent's Written Statement does not state that Respondent or its owner/PIC intends to stop dispensing controlled substances; it implicitly indicates its intention to continue dispensing controlled substances. *E.g.* Written Statement, at 6 (stating, regarding a closed-matter letter from the Texas State Board of Pharmacy that ''also served as a reminder of guidelines and expectations it was to follow,'' that Respondent ''has been following those exact guidelines''), *id.* at 9 (stating, regarding a February 2021 interaction with DEA when DEA ''brought [to its] attention'' an incident of its dispensing controlled substances to individuals sharing the same residential address, that Respondent ''took it to heart and thereby immediately implemented *an additional policy* that no other prescriptions were to be dispensed to patients who share the same residential addresses and also implemented additional measures to identify patients from [the] same address . . . [and Respondent] has held to that policy since'' [emphasis in original]). Under these circumstances, the Agency affords Respondent a full adjudication of the OSC/ISO allegations and its Written Statement, as well as the opportunity to seek Circuit Court review of that final adjudication. *See, e.g., id.* at 2–6. The Agency, based on its prior decisions, such as *Jeffrey D. Olsen, M.D.,* 84 FR 68474, 68475–79 (2019), adjudicates this matter and issues its final Decision. *See also Abdul Naushad, M.D.,* 89 FR 54059, 54059–60 (2024); *Steven Kotsonis, M.D.,* 85 FR 85667, 85668–69 (2020).

[7] 21 U.S.C. 841(a)(1) (''[I]t shall be unlawful for any person knowingly or intentionally . . . to . . . distribute[ ] or dispense, or possess with intent to . . . distribute[ ] or dispense, a controlled substance . . . [e]xcept as authorized by'' the CSA.). The CSA defines ''dispense'' to include ''deliver[ing] a controlled substance to an ultimate user.'' 21 U.S.C. 802(10).

circumstances rather than any single factor.'' *Id.* Several of those red flag factors are relevant to the adjudication of the OSC/ISO.

According to Texas law, a ''reasonably discernible pattern of substantially identical prescriptions for the same controlled substances, potentially paired with other drugs, for numerous persons, indicating a lack of individual drug therapy in prescriptions issued by the practitioner'' is a red flag factor. *Id.* § 291.29(f)(1). Likewise, under Texas law, ''prescriptions by a prescriber . . . [that] are routinely for controlled substances commonly known to be abused drugs, including opioids, benzodiazepines, muscle relaxants, psychostimulants containing codeine, or any combination of these drugs'' is a red flag factor. *Id.* § 291.29(f)(3). Another red flag factor is ''prescriptions for controlled substances . . . [that] are commonly for the highest strength of the drug and/or for large quantities (*e.g.,* monthly supply), indicating a lack of individual drug therapy in prescriptions issued by the practitioner.'' *Id.* § 291.29(f)(5). Two other red flag factors are ''multiple persons with the same address [who] present substantially similar controlled substance prescriptions from the same practitioner,'' and ''persons [who] consistently pay for controlled substance prescriptions with cash or cash equivalents more often than through insurance.'' *Id.* §§ 291.29(f)(11) and (12).

Texas law clearly sets out the operational standard for a pharmacy to follow when it is presented with a controlled substance prescription exhibiting a ''red flag factor'': ''Prior to dispensing, any questions regarding a prescription drug order must be resolved with the prescriber and written documentation of these discussions made and maintained as specified in subparagraph (C) of this paragraph.'' [8] *Id.* § 291.33(c)(2)(A)(iv) (2019–2020). This Texas documentation requirement preludes a *post hoc* oral statement that identification and resolution of a ''red flag factor'' actually took place absent the existence of documentation compliant with Section 291.33(c)(2)(C).

III. Findings of Fact

A. The Government's Case

The RFAA includes three sworn, under penalty of perjury, Declarations, one each by two Houston DIs and one by the Government's proposed expert, Registered Pharmacist Katherine Salinas. GX 3, GX 4, and GX 5, respectively.

The content of the DIs' sworn Declarations is internally consistent and consistent with each other. Accordingly, the Agency affords both DIs' Declarations full credibility.

The sworn Declaration of the Government's proposed expert states that she is a former Compliance Officer with the Texas State Board of Pharmacy.[9] The content of the Government's proposed expert's Declaration, setting out the standard of practice of Texas pharmacies and of Texas pharmacists' professional responsibilities, is accurate. *Supra* section II. The Agency, therefore, finds that the Government's proposed expert qualifies as an expert in pharmacy compliance with Texas laws and rules, and accepts her as such in this adjudication. Accordingly, the Agency affords the Government's expert's Declaration full credibility. As such, the Agency affords full credibility to the Government's expert's analyses of the record evidence, including her Declaration statements that (1) ''between at least March 5, 2020[,] to September 23, 2021, the . . . Respondent repeatedly filled prescriptions for controlled substances without addressing or resolving red flags of abuse or diversion, in violation of the minimum standard of care that governs the practice of pharmacy in the State of Texas,'' (2) these, Respondent's repeated fills in violation of the minimum standard of care in Texas, are a violation of Respondent's ''corresponding responsibility to only dispense legitimate prescriptions,'' and (3) Respondent ''filled prescriptions for L.N.W., R.B., J.P., M.F., T.J.P., J.F., M.R., L.H., L.D.W., A.H.G., P.A.T., M.L.P., N.J., J.W.W., J.J.W., J.W., [and] C.R.M. . . . outside the usual course of professional practice.'' [10] GX 5, at 6, 25; *infra.*

Regarding service of the OSC/ISO, the second Houston DI's Declaration states that ''[o]n or about November 22, 2021, . . . [she] personally served the . . . [Respondent] with a copy of the signed OTSC/ISO.'' GX 4, at 3; *see also* Written Statement, at 1, 6, 8, 9, 12, 13, 14 (explicit and implicit references to the OSC/ISO and its content in the Written Statement). Accordingly, the Agency finds unequivocal and uncontroverted record evidence that Respondent received the OSC/ISO before it submitted its Written Statement dated January 20, 2022.[11]

Moreover, the documentary evidence submitted with the RFAA concerning the alleged illegal controlled substance fills corresponds precisely with the unlawful dispensing allegations in the OSC/ISO. Among other things, this means, and the Agency finds unequivocal and uncontroverted record evidence, that Respondent had notice of every dispensing allegation, and data points supporting each allegation, before it submitted its Written Statement. Regardless, Respondent did not include evidence in its Written Statement countering the Government's evidence of specific dispensing violations.

The Agency finds substantial record evidence that the documentation submitted with the RFAA does not fully support OSC/ISO paragraph allegations 31.c, 31.d, and 31.e., but that it does support the rest of the OSC/ISO's recordkeeping allegations. OSC/ISO, at 10.

In sum, the Agency finds substantial record evidence that the RFAA presents a *prima facie* case for the OSC/ISO's dispensing allegations as to Drs. A.N., G.K., and M.K., and for the first two

[8] Subparagraph (C) states: ''Documentation of consultation. When a pharmacist consults a prescriber as described in subparagraph (A) of this paragraph, the pharmacist shall document on the prescription or in the pharmacy's data processing system associated with the prescription such occurrences and shall include the following information: (i) date the prescriber was consulted; (ii) name of the person communicating the prescriber's instructions; (iii) any applicable information pertaining to the consultation; and (iv) initials or identification code of the pharmacist performing the consultation clearly recorded for the purpose of identifying the pharmacist who performed the consultation.'' *Id.* § 291.33(c)(2)(C).

[9] Ms. Salinas's *curriculum vitae* states that her responsibilities during her more than nine years serving as a Texas Board of Pharmacy Compliance Officer included performing ''advanced, complex inspections of all classes of pharmacies to ensure compliance with laws and rules.'' GX 5, Attachment A, at 1.

[10] The Government's expert found these red flags of abuse or diversion exhibited among the prescriptions that Respondent filled, and the expert found no evidence either on the prescriptions or in the patient profiles that Respondent identified, addressed, and resolved the red flags: pattern prescribing (the same controlled substances in identical or substantially similar quantities to multiple patients, thus indicating a lack of individualized care), controlled substances known to be abused (such as oxycodone), combinations of controlled substances (such as hydrocodone-acetaminophen 10/325 mg and carisoprodol 350 mg), controlled substances prescribed in the highest strength and/or large quantities, multiple persons with the same address, and cash payments. GX 5, at 6–25.

[11] According to the CSA, ''[f]indings of fact by the [DEA Administrator], if supported by substantial evidence, shall be conclusive.'' 21 U.S.C. 877. Here, Respondent's Written Statement is not evidence, nor does it attach evidence, such as documents or sworn declarations, that the Agency may consider along with the evidence the Government submitted with its RFAA. Throughout this Decision, therefore, when the Agency finds evidence to be unequivocal and uncontroverted record evidence, the Agency is finding the evidence to be more than the ''substantial evidence'' required by 21 U.S.C. 877; it is unrebutted evidence.

OSC/ISO recordkeeping allegations (paragraphs 31.a and 31.b.). RFAA, at 44–229.

B. Respondent's Case

As already discussed, the only input from Respondent in the Agency record is the Written Statement signed by Respondent's Counsel. *Supra,* section I. Nothing, whether documentary evidence or a sworn-to declaration, is attached to the Written Statement. *Id., infra* section III.C. While the Written Statement does not include evidence, it provides the Agency with insight into Respondent's position concerning the OSC/ISO. *Supra* n.5. In this case, the Written Statement disputes most, and possibly all, of the OSC/ISO's allegations.[12] Written Statement, at 4–13. Yet, had Respondent complied fully with applicable federal and Texas law, it would possess documentary evidence disputing the OSC/ISO's dispensing allegations and the first two recordkeeping allegations. *Infra,* sections III.C and III.D. For example, this documentary evidence would include the legally required, under Texas law, documentation that it identified and resolved red flags before filling the associated controlled substance and, under the CSA, the required records that it avers it provided to the DIs and that the DIs returned to it ''two weeks later.'' Written Statement, at 10 (''The DEA found everything to be in order, and two weeks later, returned all the records and information they requested.''); *see also, e.g., id.* at 4–5; *supra* section II. Accordingly, the Agency concludes that no weight may be attached to the matters asserted in the Written Statement because the matters asserted in it are argument, not admissible evidence. *Supra* n.5.

C. The Unlawful Dispensing Allegations: Dispensing Controlled Substances Without Identifying and Resolving the Red Flag Factors of Pattern Prescribing, Prescribing Controlled Substances Commonly Known To Be Abused, Prescribing the Highest Strength and/or Large Quantities of Controlled Substances, a Practitioner's Prescribing the Same or Similar Controlled Substances to Individuals Who Share the Same Address, and Payment by Cash or Cash Equivalents

The Agency finds that the evidence the Government submitted with the RFAA, in conjunction with Respondent's not having submitted any evidence, is unequivocal and uncontroverted record evidence that Respondent filled controlled substance prescriptions issued by Drs. A.N., G.K., and M.K. without identifying, resolving, and documenting the resolution of red flag factors, as alleged in the OSC/ISO, and in violation of the CSA and Texas law. GX 5, at 1–25, GX 3E–3U. The red flag factors that, according to the unequivocal and uncontroverted record evidence, Respondent failed to identify, resolve, and create and maintain written red flag resolution documentation for are pattern prescribing, prescribing of controlled substances commonly known to be abused, prescribing the highest strengths and/or large quantities of controlled substances indicating a lack of individual drug therapy, multiple persons with the same address presenting substantially similar controlled substance prescriptions from the same practitioner, and consistently paying for the controlled substances with cash more often than through insurance. GX 5, at 1–4. The unequivocal and uncontroverted record evidence also includes that ''All State of Texas pharmacists have access to these [Texas dispensing legal] requirements, and are required to pass a jurisprudence examination in order to become a licensed pharmacist,'' and that ''All State of Texas licensed pharmacists know he/she is required to exercise reasonable caution in practice to prevent diversion by following common sense and proper dispensing practices.'' *Id.* at 3. Accordingly, there is unequivocal and uncontroverted record evidence that Respondent ''knowingly'' filled controlled substance prescriptions that were not issued for a legitimate medical purpose by an individual practitioner acting in the usual course of professional practice.[13] 21 CFR 1306.04(a), Tex. Health & Safety Code § 481.074(a) (2019), 22 Tex. Admin. Code § 291.29 (2018), 22 Tex. Admin. Code § 291.33 (2019–2020); GX 3E–3U, GX 5, at 1–25; *supra* sections II, III.A., and III.B.[14]

For example, the Agency finds unequivocal and uncontroverted record evidence that, during the approximate thirteen-month period between June 12, 2020, and July 13, 2021, Respondent unlawfully released into the community about 5,463 tablets of hydrocodone-acetaminophen 10–325 mg and carisoprodol 350 mg for nine individuals based on controlled substance prescriptions issued by the same practitioner. GX 5, at 9–17 and GX 3H, 3I, 3K, 3L, 3M, 3N, 3O, 3P, and 3Q. Each of the nine individuals paid cash for all of these Schedule II and Schedule IV controlled substance tablets. GX 5, at 9–10, 12–16 and GX 3H, at 1, GX 3I, at 1, GX 3J, at 1, GX 3K, at 1, GX 3L, at 1, GX 3M, at 1, GX 3N, at 1, GX 3O, at 1, GX 3P, at 1, and GX 3Q, at 1. All of these prescriptions were written for large quantities and the highest available dosages of hydrocodone-acetaminophen 10–325 mg and carisoprodol 350, controlled substances commonly known to be abused. GX 5, at 9–10, 12–16.

By way of further example, the Agency finds unequivocal and uncontroverted record evidence that, during the approximate eleven-month period between March 16, 2020, and February 19, 2021, Respondent unlawfully released into the community a total of about 4,642 tablets of hydrocodone-acetaminophen 10–325 mg and carisoprodol 350 mg for three individuals who share the same address and based on prescriptions issued by the same practitioner. GX 5, at 17–19 and GX 3R, 3S, and 3T.

In sum, the Agency finds unequivocal and uncontroverted record evidence that the Government presented a *prima*

[12] The Written Statement contains ambiguous statements about whether Respondent disputes the OSC/ISO allegations that it filled prescriptions for the same or substantially similar controlled substances, based on prescriptions written by the same practitioner, to individuals at the ''same address.'' Written Statement, at 8–9. The Agency finds no evidence that Respondent takes responsibility, let alone unequivocal responsibility, for committing the ''same address'' violation, or for committing any violation, whether dispensing or recordkeeping, alleged in the OSC/ISO. *Id.* at 1–13.

[13] Agency decisions have consistently found that prescriptions with the same red flags at issue here were so suspicious as to support a finding that the pharmacists who filled them violated the Agency's corresponding responsibility rule due to actual knowledge of, or willful blindness to, the prescriptions' illegitimacy. 21 CFR 1306.04(a); *see, e.g., Morning Star Pharmacy and Medical Supply 1,* 85 FR 51045, 51061 (2020) (pattern prescribing; distance; cash payments; high doses/quantities of high-alert controlled substances); *Pharmacy Doctors Enterprises d/b/a Zion Clinic Pharmacy,* 83 FR 10876, 10898 (2018), *pet. for rev. denied,* 789 F. App'x 724 (11th Cir. 2019) (long distances; pattern prescribing; cash payments); *Hills Pharmacy,* 81 FR 49816, 49836–39 (2016) (multiple customers presenting prescriptions written by the same prescriber for the same drugs in the same quantities; customers with the same last name and street address presenting similar prescriptions on the same day; long distances); *The Medicine Shoppe,* 79 FR 59504, 59507, 59512–13 (2014) (unusually large quantity of a controlled substance; pattern prescribing).

[14] GX 3AA appears immediately after GX 3A in the RFAA.

facie case that Respondent filled controlled substance prescriptions outside the usual course of pharmacy practice and in violation of its corresponding responsibility. 21 CFR 1306.04(a), Tex. Health & Safety Code § 481.074(a) (2019), 22 Tex. Admin. Code § 291.29 (2018), 22 Tex. Admin. Code § 291.33 (2019–2020).[15]

D. The Recordkeeping Allegations

The Agency finds that the evidence the Government submitted is unequivocal and uncontroverted record evidence that Respondent violated recordkeeping requirements.[16] OSC/ISO, at 10 (paragraphs 31.a. and 31.b.), *supra* sections III.A. and III.B. Specifically, the two DIs' credible, sworn Declarations state that Respondent did not have the dispensing records, biennial inventory, and most recent inventory records that the DIs requested, constituting substantial record evidence of Respondent's recordkeeping violations. GX 3, at 2, GX 4, at 2.

According to the Written Statement, Respondent ''denies'' the recordkeeping allegations, and claims that it ''willingly provided the DEA with all the documentation they requested.'' Written Statement, at 2, 10. Respondent further states that ''DEA found everything to be in order, and two weeks later, returned all the records and information they requested.'' *Id.* at 2, 10. If, as the Written Statement states, Respondent received back the records and information that DEA found to be in order, then Respondent could have attached those records and information to the Written Statement to prove its unsworn claims that it complied with the DIs' records request. In fact, Respondent did not submit any evidence, let alone this specific evidence, to support its claims of its compliance with recordkeeping requirements.

Under such circumstances, this Agency has applied, and it also applies here, the ''adverse inference rule.'' As the D.C. Circuit explained, ''[s]imply stated, the rule provides that when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him.'' *Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am. (UAW)* v. *Nat'l Labor Relations Bd.,* 459 F.2d 1329, 1336 (D.C. Cir. 1972). The Court reiterated this rule in *Huthnance* v. *District of Columbia,* 722 F.3d 371, 378 (D.C. Cir. 2013). According to this legal principle, Respondent's decision not to provide records gives rise to an inference that any such evidence is unfavorable to Respondent.

In sum, Respondent's unsworn and unsupported claims that it provided the requested records to the DIs are insufficient to rebut the *prima facie* recordkeeping violation case that the Government presented as to OSC/ISO subparagraphs 31.a. and 31.b. *Supra.* Accordingly, the Agency finds substantial record evidence that Respondent violated federal recordkeeping requirements.[17] 21 CFR 1304.21(a) and 1304.22(c).[18]

IV. Discussion

A. The CSA and the Public Interest Factors

Under Section 304 of the CSA, ''[a] registration . . . to . . . distribute[ ] or dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under . . . [21 U.S.C. 823] inconsistent with the public interest as determined by such section.'' 21 U.S.C. 824(a)(4). In the case of a ''practitioner,'' which is defined in 21 U.S.C. 802(21) to include a ''pharmacy,'' Congress directed the Attorney General to consider five factors in making the public interest determination. 21 U.S.C. 823(g)(1)(A–E).[19]

The five factors are considered in the disjunctive. *Gonzales* v. *Oregon,* 546 U.S. at 292–93 (Scalia, J., dissenting) (''It is well established that these factors are to be considered in the disjunctive'' (quoting *In re Arora,* 60 FR 4447, 4448 (1995))); *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). The Agency may give each factor the weight it deems appropriate. *Gonzales* v. *Oregon,* 546 U.S. at 293 (Scalia, J., dissenting) (quoting *In re Arora,* 60 FR 4447, 4448 (1995)), *e.g., Penick Corp.* v. *Drug Enf't Admin.,* 491 F.3d 483, 490 (D.C. Cir. 2007) (importer); *Morall* v. *Drug Enf't Admin.,* 412 F.3d 165, 174 (D.C. Cir. 2005) (practitioner), *quoting Henry J. Schwarz, Jr., Denial of Application,* 54 FR 16422, 16424 (1989).

The Agency ''may properly rely on any one or a combination of factors.'' *Gonzales* v. *Oregon,* 546 U.S. at 293 (Scalia, J. dissenting) (quoting *In re Arora,* 60 FR 4447, 4448 (1995)); *Morall,* 412 F.3d at 185 n.2 (Henderson, J. concurring and referring to pages 173–74 of the majority opinion); *see also Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018) (*citing Akhtar-Zaidi* v. *Drug Enf't Admin.,* 841 F.3d 707, 711 (6th Cir. 2016)); *Volkman* v. *U.S. Drug Enf't Admin.,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while the Agency is required to consider each of the factors, it ''need not make explicit findings as to each one.'' *MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808, 816 (10th Cir. 2011) (the Agency ''must consider each of these factors'' but ''need not make explicit findings as to each one'') (quoting *Volkman,* quoting *Hoxie,* and citing *Morall*). ''In short, . . . the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct.'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009) (on remand). Accordingly, as the Tenth Circuit has recognized, findings under a single factor can support the revocation of a registration. *MacKay,* 664 F.3d at 821.

The Government has the burden of proof in this proceeding. 21 CFR 1301.44(e); *see also Morall,* 412 F.3d at 174.

[15] Any one of these distribution violations is sufficient to deny an application for a registration or revoke a registration. 21 U.S.C. 823(g)(1), 824(a)(4).

[16] As already discussed, the Agency finds that the Government did not submit sufficient evidence to prove the recordkeeping allegations in OSC/ISO paragraphs 31.c, 31.d, and 31.e. OSC/ISO, at 10.

[17] Any one of these recordkeeping violations is sufficient to deny an application for a registration. 21 U.S.C. 823(g)(1).

[18] As for the unproven recordkeeping allegation in OSC/ISO paragraph 31.c., regarding 21 CFR 1304.04(f)(2), the Agency notes that neither the OSC/ISO or the RFAA alleges, let alone proves, that Respondent is one of the entities to which 21 CFR 1304.04(f)(2) applies. The Agency also notes, however, that the Written Statement does not claim that 21 CFR 1304.04(f)(2) does not apply to Respondent. As the Government has the burden of proof in these proceedings, this recordkeeping allegation is not sustained.

[19] The five factors of 21 U.S.C. 823(g)(1)(A–E) are:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(C) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety.

B. Factors B and/or D—Respondent's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Relating to Controlled Substances

Allegation That Respondent's Continued Registration Would Be Inconsistent With the Public Interest

While the Agency considered all of the 21 U.S.C. 823(g)(1) factors in this matter, the Agency finds that the Government's *prima facie* case is confined to factors B and D. The Agency finds that the Agency-found facts regarding Respondent's conduct with respect to factors B and D, its unlawful conduct under applicable federal and Texas law, constitute a *prima facie* showing that Respondent's continued registration would be inconsistent with the public interest. 21 CFR 1306.04(a), 1304.21(a), 1304.22(c); Tex. Health & Safety Code § 481.074(a) (2019); 22 Tex. Admin. Code § 291.29 (2018), § 291.33 (2019–2020); *supra* sections III.C. and III.D.

Accordingly, the Government has satisfied its *prima facie* burden of showing that Registrant's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4) in conjunction with 823(g)(1); *supra* sections III.C. and III.D. Respondent, who chose not to submit any evidence for the Agency's consideration, also did not attempt to rebut the Government's *prima facie* case.

V. Sanction

Where, as here, the Government has met its *prima facie* burden of showing that Respondent's continued registration would be inconsistent with the public interest due to its experience dispensing controlled substances and its failure to comply with applicable laws relating to controlled substances, the burden shifts to Respondent to show why the Agency should continue to entrust it with a registration. *Morall,* 412 F.3d at 174; *Jones Total Health Care Pharmacy,* 881 F.3d at 830; *Garrett Howard Smith, M.D.,* 83 FR 18882 (2018). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent. *Jeffrey Stein, M.D.,* 84 FR 46968, 46972 (2019); *see also Jones Total Health Care Pharmacy,* 881 F.3d at 833.

Moreover, as past performance is the best predictor of future performance, DEA Administrators have required that a registrant who has committed acts inconsistent with the public interest must accept responsibility for those acts and demonstrate that it will not engage in future misconduct. *Jones Total Health Care Pharmacy,* 881 F.3d at 833 (citing authority including *Alra Labs., Inc.* v. *Drug Enf't Admin.,* 54 F.3d 450, 452 (7th Cir. 1995) (''An agency rationally may conclude that past performance is the best predictor of future performance.''). ''[T]hat consideration is vital to whether continued registration is in the public interest.'' *MacKay,* 664 F.3d at 820. A registrant's acceptance of responsibility must be unequivocal. *Jones Total Health Care Pharmacy,* 881 F.3d at 830–31.

Further, DEA Administrators have found that the egregiousness and extent of the misconduct are significant factors in determining the appropriate sanction. *Id.* at 834 and n.4. DEA Administrators have also considered the need to deter similar acts by the respondent and by the community of registrants. *Jeffrey Stein, M.D.,* 84 FR at 46972–73.

Here, Respondent chose to submit a written statement in lieu of requesting a hearing. As already discussed, the Written Statement is signed by Respondent's counsels and, as such, is not evidence. *Supra* section I, n.5. Nor does it attach evidence. *Id.* Instead, it denies, without offering proof, the existence of any legal violation. As such, the Written Statement does not offer evidence to refute the Government's *prima facie* case. Respondent has not convinced the Agency that it understands that its filling of controlled substance prescriptions fell short of the applicable legal standards and that this substandard controlled substance prescription filling has serious negative ramifications for the health, safety, and medical care of individuals who come to it with controlled substance prescriptions to be filled. *E.g., Jones Total Health Care Pharmacy,* 881 F.3d at 834 and n.4; *Garrett Howard Smith, M.D.,* 83 FR at 18910 (collecting cases) (''The egregiousness and extent of the misconduct are significant factors in determining the appropriate sanction.''). As such, it is not reasonable to believe that Respondent's future controlled substance prescription filling or recordkeeping will comply with legal requirements.

The unequivocal and uncontroverted record evidence is that Respondent's founded violations resulted in the unlawful release of over 10,000 controlled substance tablets over a sixteen-month period. *Supra* section III.C. The tablets unlawfully released into the community were hydrocodone-acetaminophen and carisoprodol, controlled substances known to be abused and diverted. *Id.*

The Written Statement does not evidence that Respondent takes responsibility, let alone unequivocal responsibility, for the founded violations. There is no record evidence from which the Agency may reasonably conclude that Respondent's future controlled substance-related actions will comply with legal requirements. Accordingly, Respondent did not convince the Agency that it should continue to entrust Respondent with a registration.

The interests of specific and general deterrence weigh in favor of revocation. Further, given the foundational nature and vast number of Respondent's violations, a sanction less than revocation would send a message to the existing and prospective registrant community that compliance with the law is not essential to maintaining a registration.

Accordingly, I shall order the sanction the Government requested, as contained in the Order below.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a)(4) and 21 U.S.C. 823(g)(1), I hereby revoke DEA Certificate of Registration No. FP8885785 issued to Pharmacy Place, LLC. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(g)(1), I hereby deny any pending application of Pharmacy Place, LLC, to renew or modify this registration, as well as any other pending application of Pharmacy Place, LLC, for registration in Texas. This Order is effective December 1, 2025.

Signing Authority

This document of the Drug Enforcement Administration was signed on October 9, 2025, by Administrator Terrance Cole. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2025–19708 Filed 10–29–25; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Lawrence Michael Willis, D.D.S.; Decision and Order

On November 20, 2024, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Lawrence Michael Willis, D.D.S., of Commerce City, Colorado (Registrant). OSC, at 1, 6; Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, at 1, 6. The OSC proposed the revocation of Registrant's DEA Certificate of Registration No. AW1335822, alleging that Registrant has committed acts that are inconsistent with the public interest. OSC, at 1 (citing 21 U.S.C. 823(g)(1); 824(a)(4)).[1] More specifically, the OSC alleged that Registrant repeatedly violated Colorado law by failing to register for and query the Colorado Prescription Drug Monitoring Program, in violation of Colo. Rev. Stat. §§ 12–30–109(1)(b), 12–280–403(2)(a), 12–280–404(4)(a), 12–280–404(4)(a.5). OSC, at 2–4.

On February 4, 2025, the Government submitted an RFAA requesting that the Agency issue a default final order revoking Registrant's registration. RFAA, at 4–5. After carefully reviewing the entire record and conducting the analysis as set forth in more detail below, the Agency grants the Government's request for final agency action and revokes Registrant's registration.

I. Default Determination

Under 21 CFR 1301.43, a registrant entitled to a hearing who fails to file a timely hearing request ''within 30 days after the date of receipt of the [OSC] . . . shall be deemed to have waived their right to a hearing and to be in default'' unless ''good cause'' is established for the failure. 21 CFR 1301.43(a) & (c)(1). In the absence of a demonstration of good cause, a registrant who fails to timely file an answer also is ''deemed to have waived their right to a hearing and to be in default.'' 21 CFR 1301.43(c)(2). Unless excused, a default is deemed to constitute ''an admission of the factual allegations of the [OSC].'' 21 CFR 1301.43(e).

Here, the OSC notified Registrant of his right to file a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. RFAAX 1, at 4–5 (citing 21 CFR 1301.43). According to the Government's unrebutted RFAA, Registrant failed to request a hearing and the Agency so finds. RFAA, at 2. Thus, the Agency finds that Registrant is in default and therefore is deemed to have admitted to the factual allegations in the OSC. 21 CFR 1301.43(e).

II. Applicable Law

As the Supreme Court stated in *Gonzales* v. *Raich,* 545 U.S. 1 (2005), ''the main objectives of the [Controlled Substances Act (CSA)] were to conquer drug abuse and control the legitimate and illegitimate traffic in controlled substances.'' 545 U.S. at 12. *Gonzales* explained that:

> Congress was particularly concerned with the need to prevent the diversion of drugs from legitimate to illicit channels. To effectuate these goals, Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense, or possess any controlled substance except in a manner authorized by the CSA . . . . The CSA and its implementing regulations set forth strict requirements regarding registration, labeling and packaging, production quotas, drug security, and recordkeeping.

Id. at 12–14.

The OSC's allegations concern the CSA's ''statutory and regulatory provisions . . . mandating . . . compliance with . . . prescription requirements'' and, therefore, go to the heart of the CSA's ''closed regulatory system'' specifically designed ''to conquer drug abuse and to control the legitimate and illegitimate traffic in controlled substances,'' and ''to prevent the diversion of drugs from legitimate to illicit channels.'' *Id.* at 12–14, 27.

A. Allegation That Registrant Failed To Register for and Query the Colorado Prescription Drug Monitoring Program

Colorado regulations require that every practitioner licensed in the state register for and maintain an account with the Colorado Prescription Drug Monitoring Program (PDMP) and query the Colorado PDMP prior to prescribing any opioid or benzodiazepine. Colo. Rev. Stat. §§ 12–30–109(1)(b), 12–280–403(2)(a), 12–280–404(4)(a), 12–280–404(4)(a.5).

III. Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are deemed admitted.[2] 21 CFR 1301.43(e). Accordingly, Registrant is deemed to have admitted to each of the following facts and the Agency finds unrebutted evidence thereof.

Registrant admits that as a licensed practitioner in Colorado, he was required to registered with the Colorado PDMP. RFAAX 1, at 2. Despite this requirement, he failed to timely register for the Colorado PDMP, and on December 16, 2022, the Colorado Dental Board issued a disciplinary order against him for his failure to register for the Colorado PDMP. *Id.* at 3. Registrant admits that from at least July 2018 through at least June 2023, he failed to register for the Colorado PDMP. *Id.* at 3–4.

Registrant further admits that as a licensed practitioner in Colorado, he was required to query the Colorado PDMP prior to issuing prescriptions for opioids and benzodiazepines. *Id.* at 3. Registrant admits that from at least July 2018 through at least June 2023, he failed to query the Colorado PDMP prior to issuing numerous opioid and benzodiazepine prescriptions to his patients. *Id.* at 3–4.

Specifically, Registrant admits that between July 2018 and June 2023, he issued the following prescriptions without querying the PDMP:[3] approximately three prescriptions for hydrocodone-acetaminophen 7.5–325 mg (a Schedule II opiate) and 67 prescriptions for hydrocodone-acetaminophen 10–325 mg to M.G; approximately 27 prescriptions for

[1] Based on the Government's submissions in its RFAA dated February 4, 2025, the Agency finds that service of the OSC on Registrant was adequate. Specifically, the Declaration from a DEA Diversion Investigator (DI) indicates that on December 3, 2024, the DI, along with a second Diversion Investigator, traveled to Registrant's registered address and personally served the OSC on Registrant. RFAAX 2, at 1.

[2] According to the Controlled Substances Act (CSA), ''[f]indings of fact by the [DEA Administrator], if supported by substantial evidence, shall be conclusive.'' 21 U.S.C. 877. Here, where Applicant is found to be in default, all the factual allegations in the OSC are deemed to be admitted. These uncontested and deemed admitted facts constitute evidence that exceeds the ''substantial evidence'' standard of 21 U.S.C. 877; it is unrebutted evidence.

[3] These prescriptions were all issued by Registrant's receptionist and patient, M.G., using Registrant's prescription pad. *Id.* at 3–4. Registrant admits that he permitted M.G. to sign and authorize prescriptions on his behalf. *Id.* at 3. Although the Government alleges that Registrant's delegation of his prescribing authority is evidence that Registrant ''failed to take appropriate measures to safeguard against potential misuse, abuse, and/or diversion of controlled substances,'' the Government does not cite any specific violations of state or federal law or explain the nexus to public interest factors B and D (*see infra* IV.A). *Id.* at 3–4. Although the Agency notes that this conduct is clearly unlawful, *see, e.g., Neeraj B. Shah, M.D.,* 89 FR 84195, 84197 n.11 (2024) (''[W]here a registrant's actions allow an unregistered person to prescribe controlled substances, as Respondent did here, the registrant can be found in violation of 21 CFR 1306.04(a)''), the Agency need not adjudicate these allegations because there is other substantial evidence on the record demonstrating that Registrant's registration is inconsistent with the public interest.

hydrocodone-acetaminophen 10–325 mg to R.H.; approximately one prescription for diazepam 5 mg (a Schedule IV benzodiazepine), three prescriptions for hydrocodone-acetaminophen 7.5–325 mg, and 40 prescriptions for hydrocodone-acetaminophen 10–325 mg to A.M.; approximately 26 prescriptions for hydrocodone-acetaminophen 10–325 mg to J.M.; and approximately 28 prescriptions for hydrocodone-acetaminophen 10–325 mg to L.W. *Id.* at 3–4.

In consideration of the above, the Agency finds unrebutted record evidence that Registrant failed to register for the Colorado PDMP and that Registrant issued at least 195 prescriptions for opioids and benzodiazepines without first querying the Colorado PDMP.

IV. Public Interest Determination

A. Legal Background on Public Interest Determinations

When the CSA's requirements are not met, the Attorney General ''may deny, suspend, or revoke [a] registration if . . . the [registrant's] registration would be 'inconsistent with the public interest.' '' *Gonzales* v. *Oregon,* 546 U.S. 243, 251 (2006) (quoting 21 U.S.C. 824(a)(4)). In the case of a ''practitioner,'' Congress directed the Attorney General to consider five factors in making the public interest determination. *Id.;* 21 U.S.C. 823(g)(1)(A–E).[4]

The five factors are considered in the disjunctive. *Gonzales* v. *Oregon,* 546 U.S. at 292–93 (Scalia, J., dissenting) (''It is well established that these factors are to be considered in the disjunctive,'' quoting *In re Arora,* 60 FR 4447, 4448 (1995)); *Robert A. Leslie, M.D.,* 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *David H. Gillis, M.D.,* 58 FR 37507, 37508 (1993). Any one factor, or combination of factors, may be decisive, *David H. Gillis, M.D.,* 58 FR at 37508, and the Agency ''may give each factor the weight . . . deem[ed] appropriate in determining whether a registration should be revoked or an application for registration denied.'' *Morall* v. *Drug Enf't Admin.,* 412 F.3d. 165, 185 n.2 (D.C. Cir. 2005) (Henderson, J., concurring) (quoting *Robert A. Smith, M.D.,* 70 FR 33207, 33208 (2007)); *see also Penick Corp.* v. *Drug Enf't Admin.,* 491 F.3d 483, 490 (D.C. Cir. 2007).

Moreover, while the Agency is required to consider each of the factors, it ''need not make explicit findings as to each one.'' *MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808, 816 (10th Cir. 2011) (quoting *Volkman* v. *U.S. Drug Enf't Admin.,* 567 F.3d 215, 222 (6th Cir. 2009)); *Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018); *Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 482 (6th Cir. 2005). ''In short, . . . the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness of the registrant's misconduct.'' *Jayam Krishna-Iyer, M.D.,* 74 FR 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, Agency decisions have explained that findings under a single factor can support the revocation of a registration. *MacKay,* 664 F.3d at 821.

The Government has the burden of proof in this proceeding. 21 CFR 1301.44(e).

B. Registrant's Registration Is Inconsistent With the Public Interest

While the Agency has considered all the public interest factors of 21 U.S.C. 823(g)(1),[5] the Government's evidence in support of its *prima facie* case is confined to Factor D.[6] OSC, at 2–4. Evidence is considered under Factor D when it reflects compliance or non-compliance with laws related to controlled substances. *Kareem Hubbard, M.D.,* 87 FR 21156, 21162 (2022).

Here, as found above, Registrant is deemed to have admitted and the Agency finds that Registrant failed to register for the Colorado PDMP and that Registrant issued at least 195 prescriptions for opioids and benzodiazepines without first querying the Colorado PDMP. Accordingly, the Agency finds substantial record evidence that Registrant violated Colo. Rev. Stat. §§ 12–30–109(1)(b), 12–280–403(2)(a), 12–280–404(4)(a), and 12–280–404(4)(a.5). The Agency further finds that after considering the factors of 21 U.S.C. 823(g)(1), Registrant's continued registration is ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). Accordingly, the Government satisfied its *prima facie* burden of showing that Registrant's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). The Agency also finds that Registrant has presented no mitigating evidence to rebut the Government's *prima facie* case. Thus, the only remaining issue is whether, in spite of Registrant's misconduct, he can be trusted with a registration.

V. Sanction

Where, as here, the Government has met the burden of showing that Registrant's registration is inconsistent with the public interest, the burden shifts to Registrant to show why he can be entrusted with a registration. *Morall,* 412 F.3d. at 174; *Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018); *Garrett Howard Smith, M.D.,* 83 FR 18882, 18904 (2018). The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual registrant. *Jeffrey Stein, M.D.,* 84 FR 46968, 46972 (2019); *see also Jones Total Health Care Pharmacy,* 881 F.3d at 833. Moreover, as past performance is the best predictor of future performance, the Agency requires that a registrant who has committed acts inconsistent with the public interest accept responsibility for those acts and demonstrate that he will not engage in future misconduct. *See Jones Total Health Care Pharmacy,* 881 F.3d at 833; *ALRA Labs, Inc.* v. *Drug Enf't Admin.,*

[4] The five factors are:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(C) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(g)(1)(A–E).

[5] As to Factor A, there is no record evidence of disciplinary action against Registrant's state medical license. 21 U.S.C. 823(g)(1)(A). State authority to practice medicine is ''a necessary, but not a sufficient condition for registration.'' *Robert A. Leslie, M.D.,* 68 FR at 15230. Therefore, ''[t]he fact that the record contains no evidence of a recommendation by a state licensing board does not weigh for or against a determination as to whether continuation of the Respondent's DEA certification is consistent with the public interest.'' *Roni Dreszer, M.D.,* 76 FR 19434, 19444 (2011). As to Factor C, there is no evidence in the record that Registrant has been convicted of any federal or state law offense ''relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(g)(1)(C). However, as Agency cases have noted, ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Dewey C. MacKay, M.D.,* 75 FR at 49973. As to Factor E, the Government's evidence fits squarely within the parameters of Factors B and D and does not raise ''other conduct which may threaten the public health and safety.'' 21 U.S.C. 823(g)(1)(E). Accordingly, Factor E does not weigh for or against Registrant.

[6] The OSC also alleges that Factor B weighs against Registrant's continued registration, but it does not specify what factual or legal allegations are relevant to the Agency's Factor B analysis. *See supra* n.3.

54 F.3d 450, 452 (7th Cir. 1995). The Agency requires a registrant's unequivocal acceptance of responsibility. *Janet S. Pettyjohn, D.O.,* 89 FR 82639, 82641 (2024); *Mohammed Asgar, M.D.,* 83 FR 29569, 29573 (2018); *see also Jones Total Health Care Pharmacy,* 881 F.3d at 830–31. In addition, a registrant's candor during the investigation and hearing is an important factor in determining acceptance of responsibility and the appropriate sanction. *See Jones Total Health Care Pharmacy,* 881 F.3d at 830–31; *Hoxie,* 419 F.3d at 483–84. Further, the Agency considers the egregiousness and extent of the misconduct as significant factors in determining the appropriate sanction. *See Jones Total Health Care Pharmacy,* 881 F.3d at 834 & n.4. The Agency also considers the need to deter similar acts by a Registrant and by the community of registrants. *Jeffrey Stein, M.D.,* 84 FR at 46972–73.

Here, Registrant did not request a hearing or answer the allegations in the OSC, and was therefore deemed to be in default. *See supra* I. To date, Registrant has not filed a motion with the Office of the Administrator to excuse the default. 21 CFR 1301.43(c)(1). Registrant has thus failed to answer the allegations contained in the OSC and has not otherwise availed himself of the opportunity to refute the Government's case.[7] As such, Registrant has not accepted responsibility for the proven violations, has made no representations regarding his future compliance with the CSA, and has not demonstrated that he can be trusted with registration. Accordingly, the Agency will order the revocation of Registrant's registration.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 21 U.S.C. 823(g)(1), I hereby revoke DEA Certificate of Registration No. AW1335822 issued to Lawrence Michael Willis, D.D.S. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Lawrence Michael Willis, D.D.S., to renew or modify this registration, as well as any other pending application of Lawrence Michael Willis, D.D.S., for additional registration in Colorado. This Order is effective December 1, 2025.

Signing Authority

This document of the Drug Enforcement Administration was signed on October 9, 2025, by Administrator Terrance Cole. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2025–19705 Filed 10–29–25; 8:45 am]

BILLING CODE 4410–09–P

[7] Notably, and as described *supra* III, Registrant failed to register for the Colorado PDMP even after he was disciplined by the Colorado Dental Board for his failure to register. RFAAX 1, at 3–4.

DEPARTMENT OF JUSTICE

[OMB 1140–0011]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Title: Application To Make and Register NFA Firearm, ATF Form 5320.1 ("Form 1")

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives; Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: ATF encourages comments on this information collection. You may submit written comments for 30 days, until midnight on December 1, 2025.

ADDRESSES: Submit written comments and recommendations for this information collection to the following website: *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB control number: 1140–0015.

FOR FURTHER INFORMATION CONTACT: If you have questions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Meghan Tisserand, Division Staff, National Firearms Act Division, either by mail at National Firearms Act Division; Division Staff Office; 244 Needy Road, Martinsburg, WV 25405, by email at *Meghan.tisserand@atf.gov,* or by telephone at 304–616–3219.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register**, 90 FR 38508, on Friday, August 8, 2025, allowing a 60-day comment period. We encourage written comments and suggestions from the public and affected agencies concerning the proposed information collection. Your comments should address one or more of the following four points:

—Evaluate whether the proposed information collection is necessary to properly perform ATF's functions, including whether the information will have practical utility;

—Evaluate the agency's estimate of the proposed information collection's burden for accuracy, including validity of the methodology and assumptions used;

—Evaluate whether, and if so, how, the quality, utility, and clarity of the collected information can be enhanced; and

—Minimize the information collection's burden on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting people to submit electronic responses.

You may view this information collection request at *www.reginfo.gov.* Follow the instructions to view Department of Justice information collections currently under review by OMB and look for 1140–0015.

DOJ seeks PRA authorization for this information collection for three years. OMB authorization for an ICR cannot be for more than three years without renewal. DOJ notes that information collection requirements submitted to OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of information collection:* revising a previously approved collection.

2. *Title of the form/collection:* Application to Make and Register NFA Firearm.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 5320.1.

Component: Bureau of Alcohol, Tobacco, Firearms, and Explosives; U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief*

abstract: Affected public: state, local, and tribal governments, individuals or households, private sector-for or not for profit institutions, federal government.

Abstract: Any person other than a qualified manufacturer who wishes to make and register an NFA firearm must submit a written application to ATF on a form prescribed by ATF. 26 U.S.C. 5822. They must also identify the firearm they are making, themself as the maker, and, if an individual, must include their fingerprints and a photograph with the application. In 27 CFR 479.62, ATF prescribed ATF Form 5320.1 (''Form 1''), Application to Make and Register NFA Firearm, for these required purposes.

5. *Obligation to respond:* the obligation to respond is required to obtain/retain a benefit.

6. *Total estimated number of respondents:* 148,975 respondents.

7. *Estimated time per respondent:* 12 minutes.

8. *Frequency:* once annually.

9. *Total estimated annual time burden:* 29,795 hours.

10. *Total estimated annual other costs burden:* $685,285.

Revisions to This Information Collection

Information Collection (IC) OMB 1140–0011 is being revised to reflect an increase in the number of applicants per year, rising from 25,716 applicants during the last renewal to 148,975, an increase of 123,259. However, there has also been a decrease in the time burden due to changes in technology allowing electronic forms, reducing the number of respondents who must provide fingerprints and reducing the number of copies, allowing electronic fingerprints on-site, reducing respondents who must provide photographs, allowing cell phone photographs, and allowing photocopied identification cards instead, all submitted electronically. In addition, the requirement to complete an extra copy of the form and submit it to local law enforcement is going away, and the fillable forms have made it possible to populate the second copy at the same time as the first copy, both of which reduce the time burden even more. As a result, there has been a corresponding decrease in the burden hours per respondent, from .5 hours to .2 hours each, resulting in a combined reduction in total annual burden hours from 102,808 to 29,795 (a decrease of 73,013 hours).

The Department is also making the following changes to ATF Form 5320.1 (''Form 1'') due to statutory changes to the transfer tax that was previously required to accompany documents submitted pursuant to this IC:

- *modifying item 1a, which will read:* ''Tax Paid. Submit tax payment of $200 for each machinegun or destructive device. The making tax may be paid by credit or debit card, check, money order, or through *Pay.gov*. (See instructions 2.c. and 3)''
- *modifying item 1b, which will read:* ''Tax Paid. Tax payment of $0 for other types of firearms does not require completion of item 19.''

In addition, the Department is making the following changes to Form 1 in anticipation of upcoming regulatory changes, and to make the form easier to read, correct minor errors, and adjust for updated technology:

- revising the title to be more clear
- removing the photo box on the form to allow the option to attach either a passport-style photo or a copy of a photo identification document
- combining race/ethnicity items
- allowing additional types of electronic/digital signatures
- revising the fillable pdf form to link copy 1 and copy 2 so that copy 2 gets populated as the copy 1 is filled in, except for check boxes and signature
- adding references to eForms and *pay.gov*
- adding reference to the refund process
- removing the CLEO notification requirement and copy
- adding instructions for married couples jointly making, transferring, and registering a firearm, as an 'other legal entity'
- correcting typographical/grammar items
- adding email addresses for different questions: *nfa@atf.gov, ipb@atf.gov,* & *nfafax@atf.gov*

Public Comments

ATF received one set of comments on this information collection. The commenter, a dealer in NFA firearms, submitted a joint comment on ICRs 1140–0011, 1140–0014, 1140–0015, and 1140–0107, expressing support for the changes ATF is making to ATF Form 5320.1 (''Form 1'') covered by this ICR, and Forms 5320.4, 5320.5, and 5320.23.

Comment Summary

Specifically, the commenter stated that removing the requirement to send a copy of the form to CLEOs was a welcome change and would alleviate concerns the commenter said CLEOs have about inadvertently creating a firearms registry in their office due to these forms. The commenter also advocated that all attempts to modernize the form, including allowing digital signatures, should be pursued and are also long overdue. Prohibiting digital signatures, the commenter added, imposes an unnecessary burden on applicants. The commenter also expressed support for the changes allowing a copy of photo IDs instead of requiring a 2″ x 2″ photograph and removing the requirement to submit fingerprints with each application, stating that neither requirement is needed even though required by statute.

ATF Response

ATF appreciates the feedback from this commenter on the proposed changes. It is helpful to receive feedback, positive or negative, from persons impacted by our processes so we can make them more user-friendly and efficient. In response to the commenter's suggestion that ATF should make all efforts to modernize these NFA forms, we think the following information will be helpful. The proposed changes to these forms reflect larger changes the agency is making to its NFA regulations and across other NFA forms, as well. These changes have been developing for some time and are projected to take effect during the next year. In addition to allowing electronic signatures, ATF is also making its NFA forms electronically fillable as the ICRs come up for renewal, and expects to move to solely electronic forms in 2026. In addition, NFA is continuing to build the rest of its forms into its eForms platform, so applicants can complete and submit the forms online.

If you need additional information, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff; Justice Management Division; United States Department of Justice; Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: October 28, 2025.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2025–19722 Filed 10–29–25; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB 1140–0014]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Title: Application To Transfer and Register NFA Firearm (Tax-Paid), ATF Form 5320.4 (''Form 4'')

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives; Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: ATF encourages comments on this information collection. You may submit written comments for 30 days, until midnight on December 1, 2025.

ADDRESSES: Submit written comments and recommendations for this information collection to the following website: *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB control number: 1140–0014.

FOR FURTHER INFORMATION CONTACT: If you have questions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Meghan Tisserand, Division Staff, National Firearms Act Division, either by mail at National Firearms Act Division; Division Staff Office; 244 Needy Road; Martinsburg, WV 25405, by email at *Meghan.tisserand@atf.gov,* or by telephone at 304–616–3219.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register**, 90 FR 38507, on Friday, August 8, 2025, allowing a 60-day comment period. We encourage written comments and suggestions from the public and affected agencies concerning the proposed information collection. Your comments should address one or more of the following four points:

—Evaluate whether the proposed information collection is necessary to properly perform ATF's functions, including whether the information will have practical utility;

—Evaluate the agency's estimate of the proposed information collection's burden for accuracy, including validity of the methodology and assumptions used;

—Evaluate whether, and if so, how, the quality, utility, and clarity of the collected information can be enhanced; and

—Minimize the information collection's burden on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting people to submit electronic responses.

You may view this information collection request at *www.reginfo.gov.* Follow the instructions to view Department of Justice information collections currently under review by OMB and look for 1140–0014.

DOJ seeks PRA authorization for this information collection for three years. OMB authorization for an ICR cannot be for more than three years without renewal. DOJ notes that information collection requirements submitted to OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of information collection:* revising a previously approved collection.

2. *Title of the form/collection:* Application to Transfer and Register NFA Firearm (Tax-Paid).

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 5320.4.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives; U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected public: state, local, and tribal governments, individuals or households, private sector-for or not for profit institutions, federal government.

Abstract: persons with an NFA firearm must apply to ATF for approval to transfer and register the firearm as required by the NFA (26 U.S.C. 5812). ATF Form 5320.4 (''Form 4''), is the prescribed means for submitting this application, facilitates and records the firearms transfer, and also serves as proof of registration once approved.

5. *Obligation to respond:* the obligation to respond is required to obtain/retain a benefit.

6. *Total estimated number of respondents:* 546,424 respondents.

7. *Estimated time per respondent:* 12 minutes.

8. *Frequency:* Once annually.

9. *Total estimated annual time burden:* 109,285 hours.

10. *Total estimated annual other costs burden:* $2,513,555.

Revisions to This Information Collection

Information Collection (IC) OMB 1140–0014 is being revised to reflect an increase in the number of applicants per year, rising from 123,339 applicants during the last renewal to 546,424, an increase of 423,085. However, there has also been a decrease in the time burden due to changes in technology allowing electronic forms, reducing the number of respondents who must provide fingerprints and reducing the number of copies, allowing electronic fingerprints on-site, reducing respondents who must provide photographs, allowing cell phone photographs, and allowing photocopied identification cards instead, all submitted electronically. In addition, the requirement to complete an extra copy of the form and submit it to local law enforcement is going away, and the fillable forms have made it possible to populate the second copy at the same time as the first copy, both of which reduce the time burden even more. As a result, there has been a corresponding decrease in the burden hours per respondent, from .5 hours to .2 hours each, resulting in a reduction in total annual burden hours from 446,755 to 109,285 (a decrease of 337,470 hours).

The Department is also making the following changes to ATF Form 5320.4 (''Form 4'') due to statutory changes to the transfer tax that was previously required to accompany documents submitted pursuant to this IC:

- removing the $5 box in Item 1, Type of Transfer, and replacing it with a $0 box
- revising Instructions 2.b. in the ''Preparation of Application section to read: ''Transfer Tax Rates. The transfer tax is $200.00 for machineguns and destructive devices. The transfer tax is $0.00 for other types of firearms.''

In addition, the Department is making the following changes to Form 4 in anticipation of upcoming regulatory changes, and to make the form easier to read, correct minor errors, and adjust for updated technology:

- revising the title to be more clear
- removing the photo box on the form to allow the option to attach either a passport-style photo or a copy of a photo identification document
- combining race/ethnicity items
- allowing additional types of electronic/digital signatures
- revising the fillable pdf form to link copy 1 and copy 2 so that copy 2 gets populated as the copy 1 is filled in, except for check boxes and signature
- adding references to eForms and *pay.gov*
- adding reference to the refund process
- removing the CLEO notification requirement and copy
- adding instructions for married couples jointly making, transferring, and registering a firearm, as an 'other legal entity'

• correcting typographical/grammar items
• adding email addresses for different questions: *nfa@atf.gov, ipb@atf.gov,* & *nfafax@atf.gov.*

Public Comments

ATF received one set of comments on this information collection. The commenter, a dealer in NFA firearms, submitted a joint comment on ICRs 1140–0011, 1140–0014, 1140–0015, and 1140–0107, expressing support for the changes ATF is making to ATF Form 5320.4 (''Form 4'') covered by this ICR, and Forms 5320.1, 5320.5, and 5320.23.

Comment Summary

Specifically, the commenter stated that removing the requirement to send a copy of the form to CLEOs was a welcome change, and would alleviate concerns the commenter said CLEOs have about inadvertently creating a firearms registry in their office due to these forms. The commenter also advocated that all attempts to modernize the form, including allowing digital signatures, should be pursued and are also long overdue. Prohibiting digital signatures, the commenter added, imposes an unnecessary burden on applicants. The commenter also expressed support for the changes allowing a copy of photo IDs instead of requiring a 2″ x 2″ photograph and removing the requirement to submit fingerprints with each application, stating that neither requirement is needed even though required by statute.

ATF Response

ATF appreciates the feedback from this commenter on the proposed changes. It is helpful to receive feedback, positive or negative, from persons impacted by our processes so we can make them more user-friendly and efficient. In response to the commenter's suggestion that ATF should make all efforts to modernize these NFA forms, we think the following information will be helpful. The proposed changes to these forms reflect larger changes the agency is making to its NFA regulations and across other NFA forms, as well. These changes have been developing for some time and are projected to take effect during the next year. In addition to allowing electronic signatures, ATF is also making its NFA forms electronically fillable as the ICRs come up for renewal, and expects to move to solely electronic forms in 2026. In addition, NFA is continuing to build the rest of its forms into its eForms platform, so applicants can complete and submit the forms online.

If you need additional information, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff; Justice Management Division; United States Department of Justice; Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: October 28, 2025.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2025–19723 Filed 10–29–25; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB 1140–0015]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Title: Application To Transfer and Register NFA Firearm (Tax-Exempt), ATF Form 5320.5 (''Form 5'')

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives; Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: ATF encourages comments on this information collection. You may submit written comments for 30 days, until midnight on December 1, 2025.

ADDRESSES: Submit written comments and recommendations for this information collection to the following website: *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB control number: 1140–0015.

FOR FURTHER INFORMATION CONTACT: If you have questions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Meghan Tisserand, Division Staff, National Firearms Act Division, either by mail at National Firearms Act Division; Division Staff Office; 244 Needy Road; Martinsburg, WV 25405, by email at *Meghan.tisserand@atf.gov,* or by telephone at 304–616–3219.

SUPPLEMENTARY INFORMATION: The proposed information collection was previously published in the **Federal Register**, 90 FR 37887, on Wednesday, August 6, 2025, allowing a 60-day comment period. We encourage written comments and suggestions from the public and affected agencies concerning the proposed information collection. Your comments should address one or more of the following four points:

—Evaluate whether the proposed information collection is necessary to properly perform ATF's functions, including whether the information will have practical utility;
—Evaluate the agency's estimate of the proposed information collection's burden for accuracy, including validity of the methodology and assumptions used;
—Evaluate whether, and if so, how, the quality, utility, and clarity of the collected information can be enhanced; and
—Minimize the information collection's burden on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting people to submit electronic responses.

You may view this information collection request at *www.reginfo.gov.* Follow the instructions to view Department of Justice information collections currently under review by OMB and look for 1140–0015.

DOJ seeks PRA authorization for this information collection for three years. OMB authorization for an ICR cannot be for more than three years without renewal. DOJ notes that information collection requirements submitted to OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of information collection:* revision of a previously approved collection.

2. *Title of the form/collection:* Application to Transfer and Register NFA Firearm (Tax-Exempt).

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF Form 5320.5.

Component: Bureau of Alcohol, Tobacco, Firearmsn and Explosives; U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected public: federal government, state, or local government, persons selling unserviceable firearms.

Abstract: persons who wish to apply for permission to transfer and register a

National Firearms Act (NFA) firearm, and who qualify to do so under one of the statutory tax exemptions, must use ATF Form 5320.5, Application to Transfer and Register NFA Firearm (Tax-Exempt) (''Form 5''). ATF uses the information to determine legality of the firearm transfer under federal, state, and local law. Applicants also use the form to claim an exemption from paying the otherwise-required transfer tax as provided and provide the information necessary to support their claim. In addition, ATF uses Form 5 to effect a transfer resulting from operation of law, for example, a firearm in an estate being transferred to a beneficiary, or a firearm being transferred as a result of bankruptcy. Persons may also use Form 5 to facilitate temporarily conveying a firearm for repair, and its subsequent return.

5. *Obligation to respond:* required to obtain/retain a benefit, comply with law.

6. *Total estimated number of respondents:* 17,322 respondents.

7. *Estimated time per respondent:* 12 minutes.

8. *Frequency:* once annually.

9. *Total estimated annual time burden:* 3,464 total hours.

10. *Total estimated annual other costs burden:* $79,672.

Revisions to This Information Collection

Information Collection (IC) OMB 1140–0015 is being revised to include an increase in respondents from 10,591 three years ago to 17,322 in 2025, an increase of 6,731 respondents since the last renewal. In addition, the time burden has decreased from 30 to 12 minutes due to developments in technology allowing electronic forms, reducing the number of respondents who must provide fingerprints and reducing the number of copies, allowing electronic fingerprints on-site, reducing respondents who must provide photographs, allowing cell phone photographs, and allowing photocopied identification cards instead, all submitted electronically. In addition, the requirement to complete an extra copy of the form and submit it to local law enforcement is going away, and the fillable forms have made it possible to populate the second copy at the same time as the first copy, both of which reduce the time burden even more. As a result, there has been a corresponding decrease in the burden hours per respondent, from .5 hours to .2 hours each, resulting in a reduction in total annual burden hours from 5,350 to 3,464, a decrease of 1,866 hours.

In addition, the agency is making the following minor changes to Form 5 in anticipation of upcoming regulatory changes, and to make the form easier to read, correct minor errors, and adjust for updated technology:

- revising the title to be more clear
- removing the photo box on the form to allow the option to attach either a passport-style photo or a copy of a photo identification document
- combining race/ethnicity items
- allowing additional types of electronic/digital signatures
- revising the fillable pdf form to link copy 1 and copy 2 so that copy 2 gets populated as the copy 1 is filled in, except for check boxes and signature
- adding references to eForms and *pay.gov*
- adding reference to the refund process
- removing the CLEO notification requirement and copy
- adding instructions for married couples jointly making, transferring, and registering a firearm, as an 'other legal entity'
- correcting typographical/grammar items
- adding email addresses for different questions: *nfa@atf.gov, ipb@atf.gov,* & *nfafax@atf.gov*

Public Comments

ATF received one set of comments on this information collection during the 60-day notice and comment period. The commenter, a dealer in NFA firearms, submitted a joint comment on ICRs 1140–0011, 1140–0014, 1140–0015, and 1140–0107, expressing support for the changes ATF is making to ATF Form 5320.1 (''Form 1'') covered by this ICR, and Forms 5320.4, 5320.5, and 5320.23.

Comment Summary

Specifically, the commenter stated that removing the requirement to send a copy of the form to CLEOs was a welcome change, and would alleviate concerns the commenter said CLEOs have about inadvertently creating a firearms registry in their office due to these forms. The commenter also advocated that all attempts to modernize the form, including allowing digital signatures, should be pursued and are also long overdue. Prohibiting digital signatures, the commenter added, imposes an unnecessary burden on applicants. The commenter also expressed support for the changes allowing a copy of photo IDs instead of requiring a 2″ x 2″ photograph and removing the requirement to submit fingerprints with each application, stating that neither requirement is needed even though required by statute.

ATF Response

ATF appreciates the feedback from this commenter on the proposed changes. It is helpful to receive feedback, positive or negative, from persons impacted by our processes so we can make them more user-friendly and efficient. In response to the commenter's suggestion that ATF should make all efforts to modernize these NFA forms, we think the following information will be helpful. The proposed changes to these forms reflect larger changes the agency is making to its NFA regulations and across other NFA forms, as well. These changes have been developing for some time and are projected to take effect during the next year. In addition to allowing electronic signatures, ATF is also making its NFA forms electronically fillable as the ICRs come up for renewal, and expects to move to solely electronic forms in 2026. In addition, NFA is continuing to build the rest of its forms into its eForms platform, so applicants can complete and submit the forms online.

If you need additional information, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff; Justice Management Division; United States Department of Justice; Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: October 28, 2025.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2025–19724 Filed 10–29–25; 8:45 am]

BILLING CODE 4410–FY–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2023–18; MC2026–56 and K2026–56; MC2026–57 and K2026–57]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 4, 2025.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER**

INFORMATION CONTACT section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to Competitive negotiated service agreement(s). The request(s) may propose the addition of a negotiated service agreement from the Competitive product list or the modification of an existing product currently appearing on the Competitive product list.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

Section II identifies the docket number(s) associated with each Postal Service request, if any, that will be reviewed in a public proceeding as defined by 39 CFR 3010.101(p), the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each such request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 and 39 CFR 3000.114 (Public Representative). The Public Representative does not represent any individual person, entity or particular point of view, and, when Commission attorneys are appointed, no attorney-client relationship is established. Section II also establishes comment deadline(s) pertaining to each such request.

The Commission invites comments on whether the Postal Service's request(s) identified in Section II, if any, are consistent with the policies of title 39. Applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3041.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

Comment deadline(s) for each such request, if any, appear in Section II.

Section III identifies the docket number(s) associated with each Postal Service request, if any, to add a standardized distinct product to the Competitive product list or to amend a standardized distinct product, the title of each such request, the request's acceptance date, and the authority cited by the Postal Service for each request. Standardized distinct products are negotiated service agreements that are variations of one or more Competitive products, and for which financial models, minimum rates, and classification criteria have undergone advance Commission review. *See* 39 CFR 3041.110(n); 39 CFR 3041.205(a). Such requests are reviewed in summary proceedings pursuant to 39 CFR 3041.325(c)(2) and 39 CFR 3041.505(f)(1). Pursuant to 39 CFR 3041.405(c)–(d), the Commission does not appoint a Public Representative or request public comment in proceedings to review such requests. The comment due date discussed above does not apply to Section III proceedings (Docket Nos. MC2026–56 and K2026–56).

II. Public Proceeding(s)

1. *Docket No(s).:* CP2023–18; *Filing Title:* USPS Request Concerning Amendment One to Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 69, with Material Filed Under Seal; *Filing Acceptance Date:* October 27, 2025; *Filing Authority:* 39 CFR 3035.105 and 39 CFR 3041.505; *Public Representative:* Kenneth Moeller; *Comments Due:* November 4, 2025.

2. *Docket No(s).:* MC2026–57 and K2026–57; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 1448 to the Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 27, 2025; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Elsie Lee-Robbins; *Comments Due:* November 4, 2025.

III. Summary Proceeding(s)

1. *Docket No(s).:* MC2026–56 and K2026–56; *Filing Title:* USPS Request to Add New Fulfillment Standardized Distinct Product, PM–GA Contract 895, and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 27, 2025; *Filing Authority:* 39 U.S.C. 3642 and 3633, 39 CFR 3035.105, and 39 CFR 3041.325.

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Primary Certifying Official.

[FR Doc. 2025–19725 Filed 10–29–25; 8:45 am]

BILLING CODE 7710–FW–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21340 and #21341; MISSOURI Disaster Number MO–20013]

Presidential Declaration of a Major Disaster for the State of Missouri

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–4872–DR), dated October 22, 2025.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

DATES: Issued on October 22, 2025.

Incident Period: March 30, 2025 through April 8, 2025.

Physical Loan Application Deadline Date: December 22, 2025.

Economic Injury (EIDL) Loan Application Deadline Date: July, 22, 2026.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Sharon Henderson, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given as a result of the President's major disaster declaration on October 22, 2025, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Bollinger, Butler, Cape Girardeau, Carter, Cooper, Dunklin, Howell, Iron, Mississippi, New Madrid, Oregon, Ozark, Reynolds, Ripley, Scott, Shannon, Stoddard, Vernon, Washington, Wayne.

Contiguous Counties (Economic Injury Loans Only):
Missouri: Barton, Bates, Boone, Cedar, Crawford, Dent, Douglas, Franklin, Howard, Jefferson, Madison, Moniteau, Morgan, Pemiscot, Perry, Pettis, Saline, St. Clair, St. Francois, Taney, Texas.
Arkansas: Baxter, Clay, Craighead, Fulton, Greene, Marion, Mississippi, Randolph, Sharp.
Illinois: Alexander, Union.
Kansas: Bourbon, Crawford, Linn.
Kentucky: Ballard, Carlisle, Fulton, Hickman.
Tennessee: Lake.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.500
Homeowners without Credit Available Elsewhere	2.750
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.625
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 21340C and for economic injury is 213410.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 1234.3(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2025–19718 Filed 10–29–25; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21336 and #21337; ALASKA Disaster Number AK–20016]

Presidential Declaration of a Major Disaster for the State of Alaska

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–4893–DR), dated October 22, 2025.

Incident: Severe Storms, Flooding, and remnants of Typhoon Halong.

DATES: Issued on October 22, 2025.

Incident Period: October 8, 2025 through October 13, 2025.

Physical Loan Application Deadline Date: December 22, 2025.

Economic Injury (EIDL) Loan Application Deadline Date: July 22, 2026.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Sharon Henderson, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given as a result of the President's major disaster declaration on October 22, 2025, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Areas (Physical Damage and Economic Injury Loans): Lower Kuskokwim Regional Educational Attendance Area, Lower Yukon Regional Educational Attendance Area, Northwest Arctic Borough.
Contiguous Areas (Economic Injury Loans Only):
Alaska: Bering Strait Regional Educational Attendance Area, Dillingham City School District, Iditarod Area Regional Educational Attendance Area, Kashunamiut Regional Educational Attendance Area, Kuspuk Regional Educational Attendance Area, North Slope Borough, Southwest Region Regional Educational Attendance Area, Yukon-Koyukuk Regional Educational Attendance Area, Yupiit Regional Educational Attendance Area.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	6.000
Homeowners without Credit Available Elsewhere	3.000
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.625
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 213366 and for economic injury is 213370.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 1234.3(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery and Resilience.

[FR Doc. 2025–19716 Filed 10–29–25; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21338 and #21339; ALASKA Disaster Number AK–20017]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Alaska

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alaska (FEMA–4893–DR), dated October 22, 2025.

Incident: Severe Storms, Flooding, and remnants of Typhoon Halong.

DATES: Issued on October 22, 2025.

Incident Period: October 8, 2025 through October 13, 2025.

Physical Loan Application Deadline Date: December 22, 2025.

Economic Injury (EIDL) Loan Application Deadline Date: July 22, 2026.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Sharon Henderson, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given as a result of the

President's major disaster declaration on October 22, 2025, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Lower Kuskokwim Regional Educational Attendance Area, Lower Yukon Regional Educational Attendance Area, Northwest Arctic Borough.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere ...	3.625
Non-Profit Organizations without Credit Available Elsewhere	3.625
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 213386 and for economic injury is 213390.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority: 13 CFR 1234.3(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery and Resilience.

[FR Doc. 2025–19717 Filed 10–29–25; 8:45 am]

BILLING CODE 8026–09–P

Reader Aids

Federal Register

Vol. 90, No. 208

Thursday, October 30, 2025

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